United States Court of Appeals

for the Second Circuit

APPENDIX

B

P/S

75-1268

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

JACK L. CHESTNUT,
Defendant-Appellant.

APPEAL FROM UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

APPENDIX
Volume I,
Pages 1-115

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UNITED STATES COURT OF APPEALS
FILED
AUG 28 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

5

PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 75-1268

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JACK L. CHESTNUT,

Defendant-Appellant.

APPENDIX ON APPEAL

VOLUME I

Pages 1-115

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MINAL ~~DOCKET~~

TITLE OF CASE	ATTORNEYS
THE UNITED STATES vs. JACK L. CHESTNUT	*For U.S.:* Frank M. Tuerkheim, 393-2200
	For Defendant Douglas Thomson 55 E.5th St, St.Paul,Minnesota 55101 and 612-227-0856 John Cochrane ~~830 Minnesota Bldg.~~ St. Paul,Minnesota 55101

UNITED STATES COURT OF APPEALS
FILED
OCT 9 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

T-4960

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED					
			DATE	NAME	RECEIVED		DISBURSED	
2)								
,								
t,								
shal,								
rney,								
missioner's Court,								
nesses,								
f610&2 Receiv. & causing to								
ceipt of illegal corporate contribution.								
(One Count)								

DATE	PROCEEDINGS
3-74	Filed indictment.
-75	Deft appears (atty. present) pleads not guilty. 10 days for motions.
	Deft. released on his own recognizance. Griesa,J.
	Douglas W. Thomson Esq. and John A. Cochrane Esq. admitted Pro Hac Vice.
	Albert Kreiger Esq., 401 Broadway, N.Y.C. designated as local counsel.
	Oral application to extend time to make motions granted. Motions to be made returnable no later than 2/4/75 at 2:15 P.M. Deft released on his own recognizance. Weinfeld,J.
	Case assigned to Weinfeld,J. for all purposes.

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DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
08-75	Filed notice of appearance that deft. is represented by:		
	Douglas Thomson & John Cochrane		
	55 E.5th St. 830 Minnesota Bldg.		
	St. Paul,Minnesota 55101 St.Paul,Minnesota 55101		
	612-227-0856 612-224-7505		
29-75	Filed defts.notice that the following motions are being submitted to Judge Weinfeld ret. on: Feb. 4,1975 :		
	1. Motion to dismiss indictment		
	2. Motion for bill fo particulars		
	3. Memorandum of law in support of motion to dismiss		
	4. Affdt. of Douglas Thomason in support of motion for Bill of Paticula		
	5. memorandum of law in support of motion for a bill of particulars		
	6. motion to permit inspection of grand jury minutes		
	7. affdt. of Douglas Thomson in support of motion to permit inspection of grand jury minutes		
	8. memorandum in support of motion for inspection of grand jury minutes		
	9. motion for inspection and discovery.		
	10. points and authorities in support of motion for discovery and inspect		
	11. motion to compel govts. atty. to disclose evidence favorable to deft.		
	12. affdt. of Jack Nordby serving above papers by mail to the US Attys. office(Mr. Eugene Bannigan) on Jan. 27, 1975.		
-04-75	Case Called. Trial date set for May 5, 1975. Weinfeld,J.		
2-10-75	CHESTNUT--Filednotice of appearace by: Jack Nordby of 55 E.5th St,St. Paul,Minnesota		
04-75	Filed govts. bill of particulars.		
-08-75	Filed govts. memorandum of law in opposition to defts. pre-trial motions.		
-08-75	Filed govts. affdt. of Eugene Bannigan.		
-08-75	Filed OPINION # 42214--Defts. motion to dismiss and in all other respects, is denied. The case will proceed to trial on May 5,1975. Weinfeld,J.		
02-75	Filed memo end. on defts. motion dated Jan.22,1975 for inspection of grand jury minutes---The motion for an inspection of the grand jury minutes is denied; so, too, is the motion for inspection of the grand jury minutes taken in the District of Columbia. However, if required pursuant to [illegible] they will be made available to the deft. Weinfeld,J. m/n		

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(see p. 3)

Rev. CMI Docket Continuation

DATE	PROCEEDINGS	Date Order or Judgment No.
[illegible]-[illegible]-75	[illegible] on defts. motion dated Jan. 20, 1975 for discovery and inspection---motion for discovery and inspection is denied except as consented to on the part. Weinfeld,J. m/n	
[illegible]-2-75	[illegible] memo end. on defts. motion dated [illegible] to compel US Atty. to disclose [illegible] of Grand Jury---The court [illegible] upon the [illegible] that it will comply with the Brady [illegible] Weinfeld,J. m/n	
[illegible]-75	Filed memo end. on defts. motion dated [illegible] for bill of particulars---Except as consented to on the part, and as set forth in the [illegible] of the USA, the motion for a bill of particulars is denied, etc. as indicated. Weinfeld,J. m/n	
[illegible]4-75	Filed deft.'s. affdt. and notice of motion for transfer pursuant to rule 21(b) to the district of Minnesota,ret.on: April 28,1975 at 2:15pm in Rm.706.	
[illegible]28-75	Filed defts. amended notice of motion with affdt. for an order to transfer from the district for trial,ret. on: April 28,1975 in Rm.706.	
[illegible]1-75	Filed govts. affdt. of Eugene Bannigan.	
[illegible]1-75	Filed defts memorandum of law in support of motion to transfer.	
[illegible]1-75	Filed defts. affdt. of Douglas Thomson.	
[illegible]1-75	Filed memo end. on defts. motion dated April 23,1975 to transfer--Motion is denied,etc. as indicated . So ordered,Weinfeld,J. m/n	
[illegible]07-75	Filed defts. motion to suppress govts. evidence of other alleged misconduct and for pre-trial hearing,ret. on : date to be fixed by court.	
[illegible]-07-75	Filed memo end. on above motion---Motion disposed of as indicated upon the trial. Weinfeld,J. m/n	
[illegible]-01-75	Filed defts. request to conduct the examination of prospective jurors.	
[illegible]-06-75	Filed defts. motion to dismiss indictment with memo end.---Motion denied,etc as indicted. Weinfeld,J. m/n	
[illegible]03-75	Jury trial begun before Weinfeld,J.	
[illegible]06-75	Trial contd.	
[illegible]07-75	" "	
[illegible]-08-75	Trial contd. and concluded. Jury returns verdict of GUILTY.PSI ordered. Sent. adj. to June 26,1975 at 10am in Rm.706. Deft. ROR. Weinfeld,J.	
[illegible]-25	Filed Transcript of record of proceedings dated Feb 4, 1975	
[illegible]-25	Filed Transcript of record of proceedings dated April 28, 1975	

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	PROCEEDINGS	Date Ord. Judgment
[illegible]-25	[illegible] May 2, 6, 7, 8, 1975	
[illegible]-16-75	Filed defts. affdt. and notice of motion for [illegible] acquittal or for a new trial [illegible], etc. [illegible] June [illegible], [illegible].	
[illegible]-13-75	Filed govts. supplemental requests for charge to jury.	
[illegible]-13-75	Filed defts. comments upon govts. request to charge.	
[illegible]-13-75	Filed govts. objections to defts. requests to charge.	
[illegible]-13-75	Filed defts. requested instructions.	
[illegible]-14-75	Filed one sealed envelope ordered sealed by the court and is not to be opened until further order of this court. Placed in vault, in Rm.602, Cashier's Office. Weinfeld,J.	
[illegible]-20-75	Filed govts. affdt. of Eugene Bannigan.	
26-75	#75,572 FILED JUDGMENT(atty. Jack Nordby,present)--the deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of (4) FOUR MOUNTHS. Deft. is fined $5,000. Fine is to be paid or deft. is to stand committed until the fine is tobe paid or he is otherwise discharged according to law. Deft. contd. ROR pending appeal, on condition that the appeal is filed expeditiously;defts. brief and record to be filed within 30 days;govts. brief due 30 days thereafter. Payment of fine is stayed pending appeal. Weinfeld,J. (copies issued)	
[illegible]-25-75	Filed govts. memorandum of law in opposition to defts. motion for judgment of acquittal.	
[illegible]25-75	Filed defts. memorandum of law in support of motions for a judgment of acquittal for a new trial and in arrest of judgment.	
[illegible]25-75	Filed defts. affdt. of Douglas W. Thomson.	
[illegible]-25-75	Filed OPINION # 42671--The motions for a judgment of acquittal,new trial and arrest of judgment are denied in all respects. Weinfeld,j. m/n	
[illegible]ul 3-75	Filed notice of appeal from judgment of June 26-1975. Mailed copy to deft. and to U.S. Attorney.	

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WATERGATE SPECIAL PROSECUTION FORCE DEPARTMENT OF JUSTICE

Memorandum

RECEIVED
OFFICE OF THE
ATTORNEY GENERAL
MAR 26 1974

TO : William B. Saxbe
Attorney General

DATE: March 22, 1974

FROM : Henry S. Ruth, Jr.
Deputy Special Prosecutor

SUBJECT: Request for Authority to Investigate/Prosecute Activities of AMPI in 1969-1971
ACTION MEMORANDUM

Under Department of Justice Order No. 551-73, dated November 2, 1973, re-establishing the Office of Watergate Special Prosecution Force, the jurisdiction of the Special Prosecutor is defined to include certain specific areas, as well as "any other matters which he consents to have assigned to him by the Attorney General." Under this arrangement, various specific investigations have been assigned to this office, and I hereby suggest the assignment of a further area of inquiry.

In the course of this office's investigation into possible violations of law arising out of contributions by the Associated Milk Producers, Inc. (AMPI) during the 1972 Presidential campaign, information has come to our attention indicating possible violations of 18 U.S.C. Section 610 and/or Sections 201 and 371 by representatives or employees of AMPI as well as by Presidential appointees in the period 1969-1971. In order for us to conduct a complete investigation of the activities of AMPI, and in our effort to avoid duplicative efforts by this office and the Fraud Section of the Criminal Division, I request that you assign to this office the authority to investigate and prosecute all violations of law arising out of political contributions made by representatives of AMPI, and those acting in concert with them, in 1972 and the three preceding years.

This matter has been discussed with the Chief of the Fraud Section and he is agreeable to our assuming jurisdiction. As Mr. Jaworski has recused himself from investigations involving AMPI, responsibility for this investigation has devolved upon me.

WBS Approved

_____ Disapproved

Mr. William B. Saxbe
Attorney General

March 25, 1974

Leon Jaworski
Special Prosecutor

Request for Authority to Investigate/Prosecute
~~Activities of AMPI in 1969-1971~~

As you probably are aware, I have recused myself from matters dealing with our investigation of the dairy industry and, in particular, the Associated Milk Producers, Inc. (AMPI).

I have asked my Deputy, Henry Ruth, to make all decisions in these matters. I understand that he is sending a prosecutorial request to you and I assure you that he has the authority from me to do so.

Office of the Attorney General
Washington, D.C. 20530

MAR 26 1974

Henry S. Ruth, Jr., Esq.
Deputy Special Prosecutor
Watergate Special Prosecution Force
1425 K Street NW.
Washington, D.C. 20005

Dear Mr. Ruth:

This is in response to your memorandum of March 22, 1974, advising me that in the course of your investigation into possible violations of law arising out of contributions by Associated Milk Producers, Inc. during the 1972 Presidential campaign information has come to your attention indicating violations of 18 U.S.C. Section 610 and other laws by AMPI or its representatives, and other persons and entities in the 1969-1971 period. Your memorandum requests that, in accordance with Department of Justice Order 551-73, dated November 2, 1973, I assign to your office authority to investigate and prosecute the violations of law arising out of political contributions by these persons and entities, and those acting in concert with them, occurring in 1972 or before.

Although campaign contribution and related violations occurring during the period 1969-1971 would not normally fall within your jurisdiction, I agree with you that it is both prudent and necessary for you to pursue the investigation and to prosecute all possible violations in this particular area. I believe that this assignment is appropriate since the potential violations of law were discovered during an investigation clearly within your jurisdiction, and involves individuals otherwise in the focus of your investigation. Further, it is my understanding that the Fraud Section of the Criminal Division concurs in the course of action you recommend.

Treating your memorandum as consent by the Special Prosecutor to the assignment of this investigation to the Office of Watergate Special Prosecution under the terms of Department of Justice Order 551-73, I hereby assign this matter to your office.

Sincerely,

Wm B Saxbe

WILLIAM B. SAXBE
Attorney General

WATERGATE SPECIAL PROSECUTION FORCE
United States Department of Justice
1425 K Street, N.W.
Washington, D.C. 20005

January 22, 1975

Honorable Paul Curran
United States Attorney
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Dear Mr. Curran:

As you are aware, an indictment signed by the Special Prosecutor was returned in the Southern District of New York on December 23, 1974, charging Jack L. Chestnut with violating Sections 610 and 2 of Title 18 of the United States Code. The Special Prosecutor conducted the grand jury investigation of this matter pursuant to a specific delegation by the Attorney General under Department of Justice Order 551-73, dated November 2, 1973. A copy of this delegation, which authorizes the Special Prosecutor to investigate and prosecute violations of law arising out of campaign contributions made by Associated Milk Producers, Inc. or its representatives, is enclosed.

A member of your office was in the grand jury at the time this matter was presented, and at my request, you have agreed that your staff will conduct the trial of Mr. Chestnut. I have conferred with the Acting Attorney General, Laurence H. Silberman, who has informed me that he has no objection to your office conducting the trial.

Sincerely,

HENRY S. RUTH, JR.
Special Prosecutor

Enclosure

Watergate Special Prosecution Force
1425 K Street, N.W.
Washington, D.C. 20005

FOR IMMEDIATE RELEASE December 23, 1974

THE FOLLOWING INDICTMENT WAS HANDED UP BY A FEDERAL GRAND JURY IN NEW YORK TODAY:*

NAME: JACK L. CHESTNUT

AGE: 42

ADDRESS: MINNEAPOLIS, MINN.

CHARGE: ONE COUNT. Willful violation of 18 USC Section 610, illegal campaign contribution. (18 USC Sections 2 and 610).

PENALTY: Maximum of two years in prison or a fine of $10,000, or both.

A COPY OF THE INDICTMENT AND APPROPRIATE STATUTES ARE ATTACHED TO THIS FACT SHEET.

*INDICTMENT HANDED UP IN U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDICTMENT

The Grand Jury charges:

1. At all times material herein, Associated Milk Producers, Inc. (hereafter "AMPI"), was a corporation organized under the laws of the State of Kansas.

2. On or about November 3, 1970, a general election was held pursuant to the Constitution and laws of the United States at which Senators and Representatives to Congress were voted for, and said election was preceded by primary elections, political conventions and caucuses held to select candidates for said offices.

3. From on or about February 1, 1970, to in or about September 1970, Hubert H. Humphrey was a candidate for the nomination of the Democratic-Farmer-Labor Party for the office of United States Senator from the State of Minnesota, and from in or about September 1970, to on or about November 3, 1970, Hubert H. Humphrey was the nominee of the Democratic-Farmer-Labor Party for the office of United States Senator from the State of Minnesota.

4. JACK L. CHESTNUT, THE DEFENDANT, was at all times material herein the campaign manager of Hubert H. Humphrey during the campaign described in paragraph 3.

5. From on or about March 1, 1970, to on or about June 25, 1970, in the Southern District of New York and elsewhere, JACK L. CHESTNUT, THE DEFENDANT, unlawfully, willfully and knowingly did accept and receive and did cause Lennen & Newell, Inc., an advertising firm providing services to the Humphrey campaign described in paragraph 3, to accept and receive a corporate contribution from AMPI on behalf of the aforesaid Humphrey campaign in connection with the elections described in paragraph 2 in that he (1) arranged with officials of AMPI that AMPI would make payment for one month's services rendered to the Humphrey campaign by Lennen & Newell, Inc., (2) arranged with an official of Lennen & Newell, Inc. that Lennen & Newell, Inc. would prepare invoices for $12,000.00 addressed to AMPI for one month's services rendered to the Humphrey campaign, (3) forwarded and caused to be forwarded said invoices to AMPI, and (4) forwarded and caused to be forwarded to Lennen & Newell, Inc., two checks drawn on corporate accounts of AMPI dated June 1, 1970, and June 11, 1970, respectively, each in the amount of $6,000.00 and each made payable to Lennen & Newell, Inc.

(Title 18, United States Code, Sections 610 and 2)

FOREMAN

HENRY S. RUTH, JR.
Special Prosecutor

610. Contributions or expenditures by national banks, corporations or labor organizations.

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, and any person who accepts or receives any contribution, in violation of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than $10,000 or imprisoned not more than two years, or both.

For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. (June 25, 1948, ch. 645, 62 Stat. 723; May 24, 1949, ch. 139, § 10, 63 Stat. 90; Oct. 31, 1951, ch. 655, § 20 (c), 65 Stat. 718.)

"As used in this section, the phrase 'contribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families; the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: *Provided*, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction.".

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* * * * * * * * * * *

MOTION TO COMPEL ATTORNEY FOR THE GOVERNMENT
TO DISCLOSE EVIDENCE FAVORABLE TO THE DEFENDANT

Defendant, JACK L. CHESTNUT, by his attorneys, DOUGLAS W. THOMSON and JOHN A. COCHRANE, moves the court, pursuant to the authority of Brady v. Maryland, 373 U.S. 83 (1963); Miller v. Pate, 386 U.S. 1 (1967), and Giles v. Maryland, 386 U.S. 66 (1967), to order an in camera inspection of the entire government's file, before trial, and to question the prosecuting attorney, on the record, as to the existence and availability of actual or constructive information that might be favorable to the defense, including any blemishes on the character and testimony of the prosecution's witnesses.

This motion is based on the indictment, the records and files in the above entitled action, and any and all other matters which may be presented prior to or at the time of the hearing of said motion.

Respectfully submitted,

Douglas W. Thomson

Jack S. Nordby

THOMSON, WYLDE, NORDBY & FRIEDBERG
Suite 1530 - 55 East 5th Street
Saint Paul, Minnesota 55101
(612) 227-0856

John A. Cochrane

COCHRANE & BRESNAHAN
830 Minnesota Building
Saint Paul, Minnesota 55101
(612) 224-7505

Dated: Saint Paul, Minnesota
January 27, 1975

* * * * * * * * * * * *

MOTION FOR DISCOVERY AND INSPECTION

The defendant, JACK L. CHESTNUT, by and through his attorneys, DOUGLAS W. THOMSON and JOHN A. COCHRANE, moves the Court, pursuant to Rule 16 of the Federal Rules of Criminal Procedure, 18 U.S.C.A., to order the attorney for the government to permit defense counsel to inspect, copy, photograph, or subject to scientific analysis the following items within the possession, custody or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the government:

I. RULE 16(a) MATERIAL

1) Any and all statements, confessions, or admissions made by the defendant, written or otherwise recorded, or oral statements, inculpatory or exculpatory.

2) The results or reports of physical or mental examinations, and of scientific tests or experiments made in connection with this case, or copies thereof.

II. RULE 16(b) MATERIAL

1) Any and all books, papers, documents, tangible objects, buildings or places, or copies or portions thereof.

2) A list of the names and addresses of all witnesses known to the government who have knowledge of the facts of this case.

3) The record of prior criminal convictions of the government witnesses.

4) Any and all written or recorded statements made concerning this case by any persons who are not prospective government witnesses.

Defendant asserts that the material moved for pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure, 18 U.S.C.A., is material to the preparation of his defense and that the request is reasonable for the following reasons:

A. Defense counsel is unable to designate further the items sought by Paragraph 1. The inspection of the items listed in Paragraph 1 is necessary in order to prepare an adequate defense to the charge. It will enable counsel to cross-examine effectively and will reveal evidence which may prove favorable to the defendant.

B. The names and addresses of persons having knowledge of this case are relevant and necessary to enable counsel to conduct an adequate investigation of the case.

C. The criminal records of the government witnesses are necessary to enable counsel to prepare to impeach the witnesses with any prior convictions, and to obtain certified copies of convictions should they deny a conviction.

D. Defense counsel is unable to designate with particularity the statements referred to in Paragraph 4. These statements will not be producable at trial under the Jencks Act, but may furnish evidence favorable to the defendant or suggest further investigative leads. It is submitted that their value can be properly determined only by defense counsel.

It is submitted that the requested production and inspection are material to the defense and would be neither unreasonable nor oppressive to the government, but will facilitate a fair, efficient, and just disposition of the charge against the defendant.

The defendant further moves the Court, pursuant to Rule 16(g) of the Federal Rules of Criminal Procedure to order the attorney for the government to promptly notify defense counsel of the existence of additional material discovered prior to or during trial previously requested or ordered which is subject to discovery or inspection under the rule.

III. MATERIALS REGARDING THE GRAND JURY

The defendant further moves the Court for an order directing the prosecuting attorney to disclose what proceedings occurred before the grand jury in the District of Columbia and in New York in order to enable defense counsel to determine:

i. Whether defects in the grand jury proceedings occurred which would be the basis for objection to these proceedings.

ii. Whether exculpatory materials were presented to either grand jury.

IV. MATERIALS REGARDING THE AUTHORITY OF THE SPECIAL PROSECUTOR

The defendant further moves the Court for an order directing the prosecuting attorney to disclose by what regulation or other authority if any:

A. The present prosecution was assigned to the office of the Special Prosecutor under 28 C.F.R. §0.37, and

B. The present prosecution was subsequently assigned to the United States Attorney.

to the United States Attorney.

This information is necessary to enable the defendant to determine whether there were defects in the institution of the proceedings which would give rise to an objection on these grounds.

This motion is based on the indictment, the records and files in the above entitled action, and any and all other matters which may be presented prior to or at the time of the hearing of said motion.

Respectfully submitted,

Douglas W. Thomson

Jack S. Nordby

THOMSON, WYLDE, NORDBY & FRIEDBERG
Suite 1530 - 55 East 5th Street
Saint Paul, Minnesota 55101
(612) 227-0856

* * * * * * * * * * *

MOTION TO PERMIT INSPECTION
OF GRAND JURY MINUTES

The defendant, JACK L. CHESTNUT, by his attorneys, DOUGLAS W. THOMSON and JOHN A. COCHRANE, moves the court, pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure, 18 U.S.C.A., for an order permitting defense counsel to inspect and copy the minutes of the grand jury which returned the indictment and of the grand jury which considered this case in the District of Columbia, on the grounds that:

1. Various witnesses were called to testify and did testify in the above captioned matter before a grand jury sitting in the District of Columbia, which did not return an indictment.

2. The indictment herein was returned by a grand jury in the Southern District of New York.

3. Defendant has been unable to learn what witnesses and evidence were presented to the New York Grand Jury.

4. Since no indictment was returned in the District of Columbia, but an indictment was returned in New York, defendant has attempted to learn what proceedings took place in order to determine if there were fatal defects in those proceedings which would be the basis of objections to this prosecution but has been unable to do so.

5. Since no indictment was returned in the District of Columbia, defendant is entitled to know what if any exculpatory material was presented to that grand jury.

This motion is based on the indictment, the records and files in the above entitled action, and any and all other

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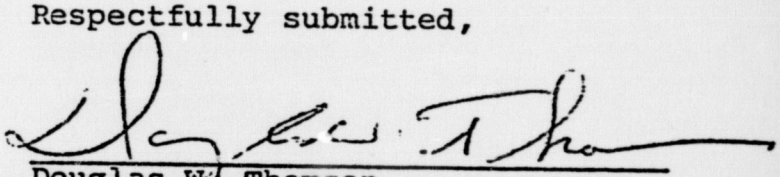
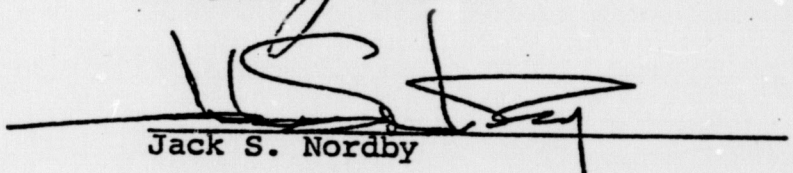
matters which may be presented prior to or at the time of the hearing of said motion.

Respectfully submitted,



Douglas W. Thomson



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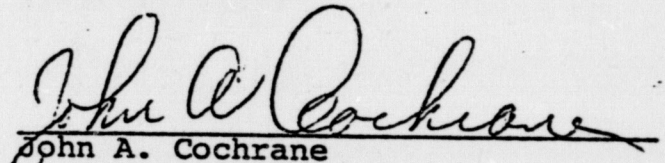

John A. Cochrane

COCHRANE & BRESNAHAN
830 Minnesota Building
Saint Paul, Minnesota 55101
(612) 224-7505

Dated: Saint Paul, Minnesota
January 27, 1975

MOTION FOR BILL OF PARTICULARS

The defendant, JACK L. CHESTNUT, by his attorneys, DOUGLAS W. THOMSON and JOHN A. COCHRANE, moves the Court, pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, for an order directing the attorney for the government to file a bill of particulars of the following matters embraced within the indictment:

1) With respect to paragraph 5 of the indictment filed in this case, state the exact time, date and place that the defendant allegedly accepted and received a corporate contribution in the Southern District of New York.

2) With respect to paragraph 5 of the indictment filed in this case, state the exact time, date and place that the defendant allegedly caused Lennen & Newell, Inc. to accept and receive a corporate contribution in the Southern District of New York.

3) With respect to paragraph 5 of the indictment filed in this case, state the precise manner in which the defendant allegedly accepted and received a corporate contribution in the Southern District of New York.

4) With respect to paragraph 5 of the indictment filed in this case, state the precise manner in which the defendant allegedly caused Lennen & Newell, Inc. to accept and receive a corporate contribution in the Southern District of New York.

5) With respect to paragraph 5(1) of the indictment filed in this case, state the name, address and job title of each official of AMPI that defendant allegedly arranged to have

Humphrey campaign by Lennen & Newell, Inc.

6) With respect to paragraph 5(1) of the indictment filed in this case, state in detail the precise manner in which defendant "arranged with officials of AMPI", setting forth the exact times, dates, and places.

7) With respect to paragraph 5(2) of the indictment filed in this case, state the name, address and job title of the official of Lennen & Newell, Inc. that defendant allegedly arranged for the preparation of the invoices.

8) With respect to paragraph 5(2) of the indictment filed in this case, state in detail the precise manner in which defendant "arranged with an official of Lennen & Newell, Inc.", setting forth the exact times, dates and places.

9) With respect to paragraph 5(3) of the indictment filed in this case, state in detail the precise manner in which defendant allegedly forwarded the invoices to AMPI, setting forth the exact times, dates and places.

10) With respect to paragraph 5(3) of the indictment filed in this case, state in detail the precise manner in which defendant allegedly "caused to be forwarded" the invoices to AMPI, setting forth the exact times, dates, and places.

11) With respect to paragraph 5(4) of the indictment filed in this case, state in detail the precise manner in which defendant allegedly forwarded the two checks to Lennen & Newell, Inc., setting forth the exact times, dates and places.

12) With respect to paragraph 5(4) of the indictment filed in this case, state in detail the precise manner in which defendant allegedly "caused to be forwarded" the two checks to Lennen & Newell, Inc., setting forth the exact dates and places.

This motion is based on the attached affidavit and memorandum of law in support of the motion, the indictment,

all the records and files in the above entitled action, and any and all other matters which may be presented prior to or at the time of the hearing of said motion.

Respectfully submitted,

Douglas W. Thomson

Jack S. Nordby

THOMSON, WYLDE, NORDBY & FRIEDBERG
Suite 1530 -- 55 East 5th Street
Saint Paul, Minnesota 55101
(612) 227-0856

John A. Cochrane

COCHRANE & BRESNAHAN
830 Minnesota Building
Saint Paul, Minnesota 55101
(612) 224-7505

Dated: Saint Paul, Minnesota
January 27, 1975

Defendant.)
)

* * * * * * * * * * *

AFFIDAVIT IN SUPPORT OF
MOTION FOR BILL OF PARTICULARS

STATE OF MINNESOTA)
) SS.
COUNTY OF RAMSEY)

DOUGLAS W. THOMSON, being duly sworn, deposes and says:

1. That he is one of the attorneys for the defendant in the above entitled case; and that he makes this affidavit in support of the motion of the defendant to dismiss the indictment.

2. The offense described in the indictment allegedly occurred between March and June, 1970 nearly five years ago.

3. The defendant, because of the passage of such a long time and the volume and complexity of activities in which he has been engaged in the interim cannot reconstruct or be expected to reconstruct, with the precision necessary to defend himself and assist his attorneys in defending him, his movements, activities, conduct and involvement if any in the conduct alleged in vague and general terms in the indictment.

4. The information requested in the motion for a bill of particulars is therefore essential to the defendant and counsel to enable them to prepare for trial herein.

Further affiant sayeth not.

Douglas W. Thomson

Subscribed and sworn to before me
this ___ day of January, 1975.

Notary Public

MOTION TO DISMISS THE INDICTMENT

The defendant, JACK L. CHESTNUT, by his attorneys, DOUGLAS W. THOMSON and JOHN A. COCHRANE, moves the Court, pursuant to Rule 12 of the Federal Rules of Criminal Procedure, for an order dismissing the indictment on the following grounds, set forth more fully in the memorandum of law attached hereto and made a part hereof:

1) The indictment charges defendant with an offense under a statutory prohibition enacted after his alleged conduct, which was not a crime at the time it allegedly took place, in violation of the Constitutional proscription of ex post facto prosecution.

2) The indictment fails to state an offense in that the payment it accuses defendant of accepting and receiving and causing another to accept and receive was under applicable law an "expenditure" not a "contribution" and 18 U.S.C. §610 does not prohibit accepting or receiving an "expenditure".

3) The statutes, 18 U.S.C. §610 and §591, in the form in force at the time of defendant's alleged offense, were unconstitutionally vague and overbroad on their faces in that their broad and ill-defined language would punish conduct protected by the First Amendment, and they did not contain an ascertainable standard of guilt but left men of common intelligence to guess at their meaning.

This motion is based on the attached affidavit and memorandum of law in support of the motion, the indictment,

all the records and files in the above-entitled action, and any and all other matters which may be presented prior to or at the time of the hearing of said motion.

Respectfully submitted,

Douglas W. Thomson

Jack S. Nordby

THOMSON, WYLDE, NORDBY & FRIEDBERG
Suite 1530 - 55 East 5th Street
Saint Paul, Minnesota 55101
(612) 227-0856

John A. Cochrane

COCHRANE & BRESNAHAN
830 Minnesota Building
Saint Paul, Minnesota 55101
(612) 224-7505

Dated: Saint Paul, Minnesota
January 27, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

UNITED STATES OF AMERICA,
:
-v- AFFIDAVIT
:
74 Cr. 1191
JACK L. CHESTNUT,
:
Defendant.

----------x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

EUGENE F. BANNIGAN, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York, and am in charge of the above-entitled case.

2. This affidavit and the accompanying memorandum of law are submitted in opposition to defendant Jack L. Chestnut's motions for an order (a) dismissing the indictment; (b) granting a Bill of Particulars; (c) granting Discovery; (d) permitting the defendant to inspect the minutes of the Grand Jury; and (e) compelling the Government to surrender its entire file to the Court for an in camera inspection for the purpose of ascertaining "the existence and availability of actual or constructive information that might be favorable to the defense."

EGB:lm

Motion to Dismiss
The Indictment

3. In a three pronged assault on the indictment Chestnut contends, in his memorandum of law submitted in support of the motion to dismiss that: (a) the conduct charged in the indictment was not a crime at the time that conduct is alleged to have occurred; (b) the indictment, in any event, does not charge a violation of Title 18, United States Code, Section 610 (1970), the applicable statute in force during the period charged in the indictment, and finally (c) Sections 610 and 591 (1970) of Title 18, United States Code, were unconstitutionally vague and overbroad on their faces in that their broad and ill-defined language would punish conduct protected by the First Amendment. Since each of these contentions is fully addressed in the Government's accompanying memorandum of law in opposition it is sufficient, for the purpose of this affidavit, to set forth in summary fashion the factual background against which Chestnut's motion to dismiss and other motions should be decided.

Broad Outline of the Government's Proof

5. At the trial the Government will show that from in or about February, 1970, to in or about September, 1970, Hubert H. Humphrey was a candidate for the nomination of the Democratic - Farm - Labor Party for the office of United States Senator from the State of Minnesota, and from

in or about September, 1970 to on or about November 3, 1970, Humphrey was the nominee of the Democratic - Farm - Labor Party for that office.

6. In early 1970, the defendant Chestnut, as manager of the Humphrey campaign, arranged with Lennen & Newell, Inc., a New York advertising firm, for certain services to be rendered to the Humphrey campaign. In connection with these arrangements Lennen & Newell agreed with Chestnut to bill the campaign on a monthly basis. In late March or early April, 1970, Chestnut telephonically contacted a representative of Lennen & Newell in New York and instructed him to send the next month's bill to American Milk Producers, Inc. ("AMPI"). In accordance with Chestnut's instructions, Lennen & Newell prepared a monthly invoice for its services to the campaign and sent it to AMPI, New Ulm, Minnesota, On or about May 8, 1970, Chestnut wrote a letter to Bob Lilly, an Assistant to AMPI's General Manager, in which he stated in part:

> "The bill which I was going to forward to you did not arrive in proper form and I returned it for proper editing and will forward it as soon as it is received."

On or about May 12, 1970, Chestnut again wrote to Lilly:

> "Enclosed is the correct billing for Lennen & Newell, Inc. Please return the check to us and we will forward it to Lennen & Newell."

Enclosed with the May 12, 1970 letter were four Lennen & Newell invoices addressed to AMPI, each in the amount of $3,000.

7. On June 1, 1970, Lilly mailed a $6,000 AMPI check payable to Lennen & Newell, Inc. to Chestnut at the latter's law officers in Minneapolis, Minnesta. On June 11, 1970, Lilly sent a second similar check for $6,000 to Chestnut at the same address. Both of these checks were received by Lennen & Newell in New York and deposited with Lennen & Newell's New York bank.

Motion for a Bill of Particulars

8. The Government consents to furnish the information requested in Items Nos. 1 and 2, insofar as is known.

9. To the extent that Items Nos. 3, 4, 6, 8, 9, 10, 11 and 12 call for the disclosure of more detailed information than that heretofore set forth in Paragraphs 5 through 7 of this affidavit, the Government objects on the grounds that such items improperly call for disclosure of the Government's theory, manner of proof and evidence in advance of trial.

10. The Government objects to furnishing the information requested by Items Nos. 5 and 7 because they improperly seek disclosure of the identity of the Government's witnesses in advance of trial.

11. The Government, with the exception of the demand for the defendant's oral statements, if any, consents to the discovery requested in Item I para. (1) and (2). The defendant's request for discovery of his oral statements, if any, is outside the scope of Rule 16(a) of the Federal Rules of Criminal Procedure.

12. The Government objects to the discovery requested in Item II, para. (1), which in effect calls for the production of all tangible evidence in its possession. No showing of the requisite materiality or reasonableness for such discovery has been made.

13. The Government objects to furnishing the discovery called for by Item II, para. (2) on the grounds that to do so would require disclosure of the identity of the Government's witnesses in advance of trial.

14. The Government objects to furnishing the "criminal records", if any, of its witness since to do so would require disclosure of their identity in advance of trial. The Government consents, however, to supply defense counsel with all available information concerning the record of criminal convictions, if any, of its witnesses at the appropriate time during the trial.

15. With respect to Item II, para. 4, the Government is presently unaware of the existence of such written or recorded statements.

16. With respect to Item III(i) and (ii) the Government objects to disclosing the proceedings which occurred before the grand jury in the District of Columbia and in the Southern District of New York. The facts set forth in the moving affidavit submitted in support of this request fail to allege the existence of any irregularity in the proceedings before either grand jury; nor do they show any particularized need which would warrant disclosure of the grand jury proceedings.

17. With respect to Item IV the prosecution was initially assigned to the Special Prosecutor by the Attorney General in accordance with the provisions of 28 C.F.R. §0.37. Subsequently, at the request of the Special Prosecutor, with the concurrence of the Acting Attorney General, the trial of the instant indictment was assigned to the United States Attorney for the Southern District of New York. In the absence of any factual or legal claim that the Special Prosecutor, in the first,instance, and the United States Attorney for the Southern District of New York, in the second, lacked lawful authority for the conduct of this case, the Government opposes the disclosure of any and all internal Department of Justice memoranda and/or correspondence relating to this prosecution. The Government agrees, however, to submit such memoranda and/or correspondence to this Court if requested to do so.

EFB:lm

Motion to Inspect the Grand Jury Minutes

18. The Government objects to disclosing the minutes of the grand jury for the reasons set forth in paragraph 16, above, in opposition to the defendant's motion for an order requiring the Government to disclose the proceedings before the grand jury in the District of Columbia and in the Southern District of New York.

Motion to Compel Attorney for the Government to Disclose Evidence Favorable to the Defendant

19. The Government is aware of its obligation under Brady v. Maryland, 373 U.S. 83 (1963) and fully intends to comply with it. Since the defendant has failed to allege facts which in any way tend to suggest that the Government will not satisfy its Brady obligation, there is no reason for this Court to assume the onerous task of sifting through the Government's files for materials which the defendant speculatively suggests may exist.

WHEREFORE, except to the limited extent consented to, defendant's motions should be denied in all respects.

EUGENE F. BANNIGAN
Assistant United States
Attorney

Sworn to before me this
4th day of February, 1975.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

v. 74 Crim 1191

JACK L. CHESTNUT, :

Defendant.

----------x

February 4, 1975
2:30 P.M.

B E F O R E :

HON. EDWARD WEINFELD,

District Judge.

APPEARANCES:

PAUL J. CURRAN, ESQ.
United States Attorney for the
Southern District of New York
EUGENE F. BANNIGAN, ESQ.,
Assistant United States Attorney

DOUGLAS THOMSON, ESQ.
JOHN A. COCHRANE, ESQ. and
JACK S. NORDBY, ESQ.,
Attorneys for Defendant

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FOLEY SQUARE, NEW YORK, N.Y. — 791-1020

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(Case called)

MR. BANNIGAN: Eugene F. Bannigan for the government.

MR. THOMSON: Douglas Thomson, 55 East Fifth Street, St. Paul, Minnesota; John A. Cochrane, 830 Minnesota Building, St. Paul, Minnesota, and your Honor, we have filed a notice of appearance for Jack S. Nordby, my partner, who is also at 55 East Fifth Street, St. Paul, Minnesota and we would make application for his admission pro hac vice for the purpose of arguing the motion.

THE COURT: How many are going to argue the motion?

MR. THOMSON: Just one, Mr. Nordby.

THE COURT: Whom do you represent?

MR. COCHRANE: I am Mr. Cochrane.

MR. NORDBY: Your Honor, I am Jack S. Nordby from St. Paul, as Mr. Thomson has indicated.

Defendant has brought a number of motions here, your Honor, and --

THE COURT: That kind of understates it, doesn't it? A number of motions? Exactly five.

MR. NORDBY: In view of the government's response, your Honor, and discovery that's taken place to date and that promised in the future, I would propose

to limit my comments to the first two arguments.

The constitutional argument is the third, with the Court's permission to submit that on the briefs.

The government does have a leading case, I understand, not today but one it indicates to me is available. We would ask an opportunity to respond to that once we have seen if it is submitted.

Other than that --

THE COURT: How much time do you require on that?

MR. NORDBY: If we could have a week after we get the case, your Honor. I don't know, perhaps Mr. Bannigan --

THE COURT: There is a copy available. It was delivered to chambers a little while ago.

MR.NORDBY: This is a different case, your Honor.

THE COURT: This is part of the Third Circuit case.

MR. BANNIGAN: Yes, your Honor, this is a case which deals with the constitutionality of the 1972 amendment or amendments to the statute.

THE COURT: This is assuming the 1972 amendment applies here. You are arguing it doesn't apply, so why

are we spending time on it?

MR. BANNIGAN: I merely mentioned the existence of the case to counsel this morning. I don't know what he is arguing.

MR.NORDBY: I mention that only to indicate, your Honor, that I would not belabor the Court with any of the points raised except the first two.

Now the government, as I examine their brief in the two hours I have had an opportunity to look at it, clearly did not understand defendant's position. We have alleged that this defendant was indicted under an amendment enacted in 1972. We think it is clear from the face of the indictment the government has not denied it, much less documented that they did not submit the 1972 amendment.

THE COURT: That they did not what?

MR.NORDBY: That they did not submit the 1972 amendment, your Honor, which substantially changed the scope of 610 to the grand jury.

THE COURT: Were they required to submit the 1972 amendment to the grand jury if the alleged offense took place prior to 1970? You say that they apparently didn't understand your argument. I think you can include the Court at this point on that, and I would appreciate

it if you would enlighten me on what theory you get to a 1972 statute with respect to an offense that took place prior to 1970.

MR. NORDBY: Your Honor, that is precisely our question. Our position is --

THE COURT: That is my question to you. I don't understand how you reach out and reach to a statute that clearly has no bearing here.

MR.NORDBY: Your Honor, the government submitted the 1972 statute to the grand jury.

THE COURT: Did it?

MR. NORDBY: We assume that it did since it was attached.

THE COURT: How do you know that?

MR. NORDBY: The language of the indictment is in the language of the '72 amendment.

THE COURT: The language of the indictment refers to a contribution, not an expenditure, doesn't it?

MR. NORDBY: It does, but defines it in terms of the '72 amendment, your Honor, as an indirect payment for services.

THE COURT: Wasn't it an indirect payment with or without the 1972 statute?

MR. NORDBY: Yes, sir, it was, but in 1970

it was an expenditure and not a contribution. In 1972, the two definitions were joined.

Now, perhaps I can illustrate it this way. Since 1907, in the Tillman Act it has been unlawful for a corporation to make the contribution.

In 1947 the Taft-Hartley Act expanded that and prohibited the making of a contribution, the making of an expenditure, and the receipt of a contribution.

Now, since that time, it has never been a crime to receive an expenditure. It is not today, it has never been.

THE COURT: Is that what the indictment charges, the receipt of an expenditure?

MR. NORDBY: Precisely, your Honor.

THE COURT: Where is the indictment? Show me the single word in the indictment that refers to an expenditure.

MR.NORDBY: Your Honor, in the Auto Workers Case --

THE COURT: No, I am talking of this indictment.

MR. NORDBY: The language in the indictment --

THE COURT: Show me where the word expenditure appears.

MR. NORDBY: No, it certainly does not, your Honor, and the government knew when it drafted the indictment that it was no offense, I am sure, to receive an expenditure and naturally they used the word contribution because under the '72 Act it does not make any difference, both words are defined the same, but it is still not prohibited to receive an expenditure. It becomes moot in '72 since the definitions are parallel. But in '70, a payment or a disbursement, and I think a contribution, were contained in the definition of expensiture. They were not contained in the definition of contribution.

So if what Mr. Chestnut did in 1970 --

THE COURT: Didn't a contribution refer to a gift or other thing of value?

MR. NORDBY: That's correct, your Honor.

THE COURT: Isn't a thing of value the picking up of a tab that somebody else owes?

MR. NORDBY: Your Honor, but for the cases that developed, I think the Auto Workers Case and the CIO Case and the others, that would have been a perfectly reasonable construction; but the legislative history shows and the cases show that the definition of contribution was narrowed down very considerably in those cases; and in the Auto Worker Case, referring to a similar payment,

as I recall it was a payment for broadcast time, payment to broadcasters by the Auto Workers, Justice Frankfurter said it was precisely to cover this sort of conduct that Congress added the word "expenditure" to the Taft-Hartley Act in '47.

Now, the only thing contrary to that that the government has showed us is the Miller Case which is unrecorded, and I had a chance to read through briefly today, which refers to a payment or to theforgiving of a debt as a gift, and therefore is a contribution.

But if the Court has a chance to examine that case, I think your Honor will see that the issue posed here was not raised at all, the distinction between the two. They simply said this:

A civil complaint in that case stated a cause of action to agree that it ought not to have been dismissed in the district court.

We are dealing here with a criminal statute under a badly drafted statute whose legislative history is monstrous. The debates indicate over --

THE COURT: That doesn't mean that a crime can't be charged under it, can it?

MR. NORDBY: Your Honor under the Auto Workers Case, conducted very, very similar to this was described

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specifically, not only described as an expenditure but the Court said it was precisely to cover this, close this loophole, that the word expenditure was added in '47, the giving of an expenditure, not the receiving.

Now, if it was a loophole, if the government prefers to call it that, or if it was a deliberate act of Congress, an intentional exclusion of receiving, this sort of thing that was put into the statute does not matter.

We think, your Honor, the legislative history and particularly the Auto Workers Case, that this simply isn't within the scope of the word contribution as it was defined in 1970.

I realize that this is -- the confusion arises, I think, primarily because up to and including 1970, expenditure and contribution were defined in the same terms except for a couple of broader terms.

THE COURT: Why do we go to the 1972 statute for the definition?

MR. NORDBY: I have no idea, your Honor.

THE COURT: Why do you go to it?

MR. NORDBY: I go to it because it was attached to the indictment, the copy. We received it in an unusual way, your Honor. If you will look at the copy we have

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attached to the last page of our memorandum, this is a photocopy of the indictment that we have received.

THE COURT: Where is the indictment here? Let me have it. I don't know whether the original document could -- I don't know what you have. This is the only thing that will guide me. Press releases and attachments in the office don't mean a thing at all. Publicity does not mean anything. This is the only document by which I will be governed in making my ruling here.

MR. NORDBY: Absolutely, your Honor.

THE COURT: I find no attachment to this indictment.

MR. NORDBY: I didn't know, your Honor, whether or not it was attached to the one filed with the Court but we did attach it to our memorandum; and of course it is only circumstantial evidence, and as this Court indicated in the McKinney Case, it is what the indictment says that determines.

THE COURT: That is just what I said now, isn't it?

MR.NORDBY: Right.

THE COURT: And I haven't changed my mind since the McKinney Case which went up to the Supreme

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Court.

MR. NORDBY: That's right, but your Honor asked me how I arrived at the conclusion it was the '72 amendment.

THE COURT: To me it is a very simple question. On what basis would you assume that in presenting a matter to a grand jury with respect to an offense that took place prior to 1970, that the prosecutor relied upon a 1972 statute?

MR. NORDBY: These things, your Honor. The language of the indictment describes an indirect payment, the giving of an indirect payment in those words -- I don't think he uses the word indirect but it is an indirect payment he is describing -- only becomes a crime under the '72 amendment. The word services, payment for services --

THE COURT: Let me ask you this question. Perhaps this will clarify your position.

Assuming there had been no amendment in 1972, are you saying that this indictment does not allege a crime?

MR. NORDBY: Yes, sir.

THE COURT: And for what reason?

MR. NORDBY: Because in 1970 it was not a

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crime to accept a payment of the sort described here.

THE COURT: Was it not? Wasn't this a thing of value or a gift?

MR. NORDBY: No, sir, it was an expenditure under the --

THE COURT: I think that is quibbling with words, with due respect.

MR. NORDBY: Well, your Honor, I am using -- as I had indicated earlier, if we were dealing with a vacuum perhaps I'd be inclined to agree with the Court, but Justice Frankfurter in the Auto Workers Case said, if I may repeat it, that it was precisely to cover this sort of thing.

See, there was an investigation of the 1944 election by a congressional committee, and I think in the '46 election the Ellender Committee, and they looked at the expenditures that were made and they concluded that corporations haven't violated the law because they hadn't given any checks directly to candidates, they hadn't said, "Here's a contribution, Mr. Candidate, from us, a corporation."

THE COURT: That was something that they were doing themselves. What benefit, what interest did this Milk Association have in this entire company? The

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unions had a legitimate interest, did they not, in advancing their own cause? What interest in the milk producing company have here?

MR.NORDBY: I don't know, your Honor, but let me clarify this:

Contrary to what the government says three times in its brief, we do not say and have not said that it was lawful for the milk producers to make that expenditure. It was not. It was unlawful probably, under the --

THE COURT: You said make that expensiture. The government says they made the contribution.

MR. NORDBY: Very well. I simply argue the government -- the government says three times in its brief that we allege the expenditure was legal. We do not. We allege it was not illegal to receive it, and that is the distinction that I have to continue to emphasize. The statute has never prohibited receiving an expenditure.

THE COURT: But it did prohibit receiving a contribution.

MR. NORDBY: Yes, sir. Yes, and I --

THE COURT: That is why you are latching on to the word expenditure.

MR. NORDBY: Absolutely, there is no question about that. By the same token, that it was not a crime

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for Lennon & Newell to receive that money in 1970, perhaps not today. Simply because the statute, if my definition of expenditure is correct, and I rely for the definition on the Supreme Court's language in the Auto Workers and CIO Cases.

The milk producers could have been charged, I have no doubt with making this contribution. Conceivably Mr. Chestnut could have been charged with aiding and abetting them in making it.

But we have the other side of the coin here. There is no reported decision that I have found involving the accusation of receiving.

So all these cases that are cited are distinguishable to that extent. The indictment, of course, charges two things. It charges Mr. Chestnut actually received and accepted the payment, and it charges that he caused Lennon & Newell to receive it. On either one we submit it does not charge an offense.

THE COURT: You say that AMPI could have been charged with making a contribution and the defendant could have been charged with aiding and abetting, but does not the indictment read in part that way?

MR. NORDBY: I think not, your Honor.

THE COURT: "Did accept and receive and did

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cause Lennon & Newell, an advertising firm providing services to the Humphrey campaign in Paragraph 3, to accept and receive a corporate contribution from AMPI on behalf of the aforesaid Humphrey campaign."

MR. NORDBY: Charges accepting, receiving, and causing to accept and receive, your Honor, which is quite a different thing. It is not prohibited by that statute. It is quite a different thing from making the contribution or causing or aiding and abetting AMPI to make it. That is the distinction that's gone through the statute from 1907, the Tillman Act, until today.

The giving was prohibited but not the receiving. In fact, in 1907 it wasn't a crime to receive contributions.

THE COURT: Under your argument it all turns on whether or not it was an expenditure or contribution.

MR. NORDBY: Yes, sir.

THE COURT: All right.

MR. NORDBY: The matter of fact is both of our first two arguments, and your Honor is quite right that is the question and we submit that the Auto Workers Case and the legislative history settled that.

Now, if I might just address one or two more

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remarks to the ex post facto argument, because I think it is important, your Honor, and I don't think I fully answered your previous question.

A number of words occur in the indictment that occur only in the '72 amendment, the payment for services. The statute cited in the indictment, and your Honor dealt with this, of course, in the McKinney Case, is simply 18 U.S.C. 10, the presumption being they meant the statute I suppose that was on the books at that time. That is not conclusive, I understand that.

The press release, copy of the statute is attached to the indictment with a cover sheet saying the appropriate or the applicable statutes are attached.

THE COURT: Why should I pay any attention to a press release? I am after saying I never pay attention to press releases. Sometimes in this state of facts they are distorted. I am bound by the indictment that is before me.

MR. NORDBY: Yes, your Honor, but we are offering this as, if you will, an admission of the government against its own interest, a piece of circumstantial evidence that they gave the 1972 statute to a grand jury dealing --

THE COURT: How can they possibly? Isn't

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the presumption that when a matter is presented to a grand jury, it is presented in terms of an applicable statute at the time of the commission of the alleged offense?

You are trying to make this statute retroactive in order to get in under your ex post facto argument. I would only presume that the presentation of a matter is within the framework of a statute as it exists at the time of the commission of the alleged offense. That only makes common sense.

MR. NORDBY: I agree with your Honor that is the presumption and we are submitting here that there is substantial evidence that the government did not do that in this case; it is an understandable enough mistake, they are seeking an indictment in 1972, two years after the offense there has been an intervening amendment of which perhaps the person who presented the case to the grand jury wasn't aware.

But again, in the copy the government provided to the defendant that is the only copy of this indictment we have received officially, Section 610 is reproduced and below it with the dates, 1943, 1948, 1951, the official citations of the statutes and below that, different format, the '72 amendment without the dates following it.

I don't know whether that was deliberate or

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inadvertent.

THE COURT: Where did you get that press release from?

MR.NORDBY: It was sent to us by the special prosecutor, your Honor. It is the copy of the indictment that was provided to us.

THE COURT: That simply means the prosecutor ought to stick to his last and just rely upon grand jury indictments; and stop issuing releases.

MR. NORDBY: But your Honor it assumes a greater importance here because if in fact the wrong statute was given to this grand jury, as we submit it was, and as we submit the internal references in the language of the indictment itself shows, the grand jury returned an indictment that we believe they would not and could not have returned if the 1970 statute had been given to them ; because there existed the distinction.

We can't expect the prosecutor of course to explain the Auto Workers Case to the grand jury and the legislative history to the grand jury. That is not practical.

But we think and we hope that having examined these arguments and authorities the Court will agree with us that this is more than a superficial quibble.

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We are saying that Mr. Chestnut would not have been indicted if the 1970 statute had been given to the grand jury because what he did in 1970 was not a crime.

THE COURT: What is your next argument, Mr. Nordby?

MR. NORDBY: I beg your pardon?

THE COURT: I say what is your next argument?

MR. NORDBY: Your Honor, unless the Court has any questions regarding the other motions or this argument.

THE COURT: Let's see what the other motions are. What is your constitutional claim here which has never been passed upon by the Supreme Court apparently.

MR. NORDBY: The constitutional argument is this, your Honor, the statute on its face is so broad and so vague that it chills the First Amendment rights to speak and of press and assembly, and petition for redress of grievances; and we submit that under Gooding against Wilson, although the conduct attributed to Mr. Chestnut is not on its fact speech or on its face protected by the First Amendment the Gooding vs. Wilson gave standing to anyone charged under a statute to challenge its constitutionality if in fact the chills protected conduct in other

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people.

Now, the Boyle Case didn't deal with this issue, but the Boyle case is the only -- with the possible exception of the other case Mr. Bannigan mentioned tome the Boyle case is a Circuit Court case -- that rejected a challenge to the constitutionality. It did not cite the opinions in the CIO and Auto Workers cases in the Supreme Court that said that they thought the statute was unconstitutional without reaching -- the majority never did reach the issue.

We submit that if the Court reaches this issue here, that is, if the ex post facto argument should be rejected and the argument that the indictment doesn't state an offense, then under Gooding vs. Wilson the constitutional issue is very much presented here because if the statute is unconstitutional on its face, Mr. Chestnut can challenge it even though there is no showing that his conduct, conduct attributed to him was protected.

THE COURT: What is the invasion with his right of freedom of speech or to publicize any political view he may have under this statute? What prohibits him from doing it?

MR. NORDBY: We aren't saying, your Honor, that Mr. Chestnut was necessarily prohibited here from

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exercising First Amendment right, although arguably the area of redress of grievances of course is one where the law is by no means clear, and theory and argument can take us almost anywhere.

But that isn't our argument.

Our argument is that if it violates someone else's First Amendment rights and he is charged under it, he can challenge it and if it is unconstitutional on its face he has standing to challenge it.

THE COURT: But whose right do you claim was violated here, the milk producer's rights?

MR. NORDBY: No, the rights of anyone, your Honor, who --

THE COURT: But it has to be one of three in this case, either the milk producers, or the advertising agency, or the defendant. It can't be some ethereal non-existent person. Whose rights to dyou claim were violated here or were chilled under this set up?

MR. NORDBY: Your Honor, Gooding vs. Wilson was a case involving speech, and very violent racist, provocative fighting words to a police officer. Gooding challenged statute, the ordinance, it was a City ordinance I believe, as unconstitutional on its face and the Supreme Court said "Well, these may well be fighting words that

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he uttered, and under a proper construction of the statute it could well be that we can prohibit this. This is not protected speech, but ordinance is unconstitutional on its face, therefore Gooding can challenge it."

I submit that that is even stronger.

THE COURT: Is Gooding charged with any offense?

MR. NORDBY: Gooding was charged I think with disorderly conduct or breach of the peace or something arising out of his words, and they were violent words, I think threatening to kill a police officer.

They said this is not protected speech; but Gooding can challenge the ordinance anyhow and did, and they reversed the conviction on the ground that even though his speech was not protected, this ordinance chilled protected speech. And that is our position; although we would also submit that as the campaign manager, as the indictment alleges, for a political candidate, and in the political arena, the statute protects people working on behalf of candidates who have rights to speech, rights to petition more broadly for redress of grievances and rights to be involved in the political process.

And we don't say that Congress doesn't have the power to regulate elections, they clearly do, and that's repeatedly been held, but I think your Honor will find in

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the Auto Workers Case and CIO and the Pipefitters Case, which is the most recent that the Supreme Court has each time narrowed the construction of the statute because if it were as broad as the natural meaning of its language indicates it would be unconstitutional, the entire court in the CIO case said if the conduct charged here were under the statute it would be unconstitutional on its face.

Even the majority said that. They said the union publication is not covered so we don't have to reach the constitutional issue,but after that of course the Gooding case came along, which I read to say that it can be challenged on its face by someone whose alleged conduct itself was not protected.

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I think, your Honor, that's all that I have except that I am a bit concerned that I haven't adequately clarified the ex post facto argument. I hope the Court does not view that as merely a quibble on our part. I know the attachments to the indictment are not part of the official papers here but --

THE COURT: There is no attachment to this indictment.

MR. NORDBY: Well, it is the appendix to our memorandum of law, your Honor. We have included it, and I would only ask the Court to receive that as circumstantial evidence that a '72 amendment was submitted to the grand jury to corroborate our reading of the indictment to that effect. What the indictment charges is receiving what in 1970 was an expenditure and therefore was not prohibited.

THE COURT: How about your other motions here? Have those been resolved? Have you agreed on the particulars and discovery?

MR. NORDBY: Yes,your Honor. I think between the Government's affidavit submitted to us today and Mr. Thomson's discussions with Mr. Bannigan, discovery has been resolved.

Is that correct?

MR. THOMSON: My understanding is that Mr.

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Bannigan agreed to -- we already have received some documentation.

THE COURT: I want to know if there is anything open. I don't want to carry this thing, any open matters with me. That is the reason I am saying --

MR. THOMSON: I would ask Mr.Bannigan --

THE COURT: That is why I suggested at the start of the argument that it would be desirable if you gentlemen conferred and just submitted the open items to me, and I can dispose of them.

Why don't I hear Mr. Bannigan first on the major argument and then we will see if there is anything open, and you can confer and come back.

MR. NORDBY: May I have just one specific, your Honor? We have requested that the Government tell us precisely how this case came to the special prosecutor and how it was returned to the United States Attorney. Paragraph 17 of Mr. Bannigan's affidavit simply says that it was, and declines to provide us with any documentation. That request is directed at the decision in United States v. Andreas which Judge Larsen in Minnesota held that the prosecutor did have authority under a letter written from the special prosecutor, I believe, an unpublished letter authorizing the special prosecutor to prosecute Mr. Andreas.

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We have been unable to find negligence in the Code of Regulations, except 0.37 giving the prosecutor general authority but only over certain cases if he consents to take them; and we ask Mr. Bannigan to provide us evidence that the special prosecutor took this case by consent, to refer us to any published or any unpublished documentation that it was properly pursued by the special prosecutor and, secondly, that it was properly and legally referred back to the United States Attorney.

In the event of having received that, if we thought there were a jurisdictional or other defect here, of course we would pursue it.

THE COURT: I was going to ask you that.

Supposing the special prosecutor came into this District, assuming he had authority, to present it, and he did not, and the grand jury returned the indictment. Are you saying that the indictment falls, and do you have any authority to support that position?

MR. NORDBY: The authority I have, your Honor, was the authority presented in the Andreas case and it didn't prevail there, but that situation is distinguishable, we think, here for two reasons.

In this case there was a letter apparently specifically authorizing the special prosecutor to handle

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that matter. Secondly, that was a presidential election involved in Andreas in 1968. This is 1970 and it's a congressional election.

Now, when you get to a 1970 congressional election, the authority originally given the Watergate special prosecutor has been considerably diluted and the catch-all clause of Section 0.37 seems to say that the special prosecutor may inquire into certain other matters, but the statute or the regulation is clearly designed to apply to the misconduct in the Watergate episode itself, and in the preceding presidential election.

THE COURT: Well, the special prosecutor apparently has been in a great many of these campaign contribution cases. How did he get into them?

MR. NORDBY: We are asking how he got into this one, your Honor.

THE COURT: You would like to know.

MR. NORDBY: A letter was written in September, I think, of 1974 by Archibald Cox, I believe, or by Attorney General Richardson to Archibald Cox, authorizing him to conduct certain investigations. We don't know whether Mr. Chestnut was mentioned there, whether there was language in that or some other communication.

THE COURT: He wouldn't have to mention any

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specific individual, would he, if he delegated authority, if the Attorney General did, and said, "You may make an inquiry with respect to any matter under the Corrupt Practices Act"? He wouldn't have to mention any individual, I would think.

MR. NORDBY: Well, it would be our position that he couldn't go that far because Congress didn't contemplate a delegation on that scale. The prosecution of these matters is quite specifically vested in the Attorney General before the special prosecutor's force was created, and Judge Larsen's opinion in Andreas indicates that Congress carved out a small exception to that because of the extraordinary circumstances, and said, "These will be handled by the special prosecutor independently altogether by definition, independent of the Justice Department."

This may or may not be one of those cases, but this case is complicated by the additional fact that it is now back in the Justice Department, so if the original delegation was to the special prosecutor to protect the integrity of the investigation, then quite arguably there was no authority to refer it back to the Justice Department.

We need to know how this case moved, if in fact any official steps were taken, before we can challenge the law. All I can do at this point is to refer the Court

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to the Andreas case. We didn't brief the point because we didn't want to argue it in the abstract. We tried to find something that --

THE COURT: When you answer the other matter you can brief this one, too.

MR. NORDBY: Thank you, your Honor.

MR. BANNIGAN: Your Honor, if I may, just to respond to the last point raised, we have stated in our affidavit that we are in possession of internal Government memoranda and documents concerning the prosecution of this case, and we have agreed in our affidavit, if the Court so desires, to submit that material to the Court in an in camera inspection. I think that is sufficient. We have no obligation to turn over internal --

THE COURT: What is the need to submit it in camera? What is the great secrecy that is involved in a direction?

MR. BANNIGAN: It is an internal memo to which counsel has no right.

THE COURT: I think sometimes there is a jealous concern about matters that are really quite nonessential in terms of disposing of matters.

MR. BANNIGAN: Your Honor, we feel that there is nothing which should be confidential --

THE COURT: This building won't collapse if you

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let the other side look at it.

MR. BANNIGAN: We will make available to defense counsel copies of the letters.

THE COURT: That disposes of that. Let's go on. Let's get down to fundamentals.

MR. BANNIGAN: All right.

Your Honor, before getting to fundamentals, I would like to address myself to the question of open discovery. I have had a telephone conversation with Mr. Thomson, and I am not quite sure what he says when he indicates that I agreed to give him some other documents. I think what I said, and I may be wrong, in our conversation is that I knew that he had some documents in connection with this case, and I would consider giving him some others. That was prior to the time that I submitted the affidavit and memo, and after I opposed the production of a box of documents under Rule 16-b on the ground that no requisite materiality has been shown in the papers submitted in this case as to why any of this material is necessary.

To the extent, however, that any of the documents emanate from Mr. Chestnut, these will be provided.

THE COURT: What I think you ought to do is proceed with your argument, and since these gentlemen have traveled a long distance to argue this matter, at the

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conclusion of your argument, confer and see what items there are open insofar as discovery is concerned.

There is no point in bringing them back on another occasion here.

MR. BANNIGAN: Very well, your Honor.

Very simply, your Honor, because I believe this matter does not require a great deal of argument, the indictment on its face charges a violation of the 1970 version of 610, the statute in force at the time.

It simply charged in the indictment that Mr. Chestnut received from AMPI two $6,000 checks to pay an outstanding campaign debt to Lennon & Newell, Inc. If that is not a contribution under any definition, I don't know what is, and I suggest Congress doesn't know what is, and I suggest the Courts don't know what is.

THE COURT: He claims it was an expenditure.

MR. BANNIGAN: I will address myself to that argument in a moment, your Honor.

It is clear from the legislative history and the Supreme Court's decision in Auto Workers that the conduct engaged in by Mr. Chestnut in this case and as charged in this indictment in very plain and simple language was criminal. Moreover, I point out, your Honor, the 1970 amendment made no change with respect to the

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activity charged in this indictment, and that the criminal conduct in 1970 will constitute the same exact type of conduct under the 1972 amendment, and I refer your Honor to Pipe Fitters v. United States, a recent Supreme Court decision, in which the Court concluded after reviewing Section 205 of the Federal Election Campaign Law of 1970, amended since 610, that it merely codified the existing law in this regard.

Turning to the question whether this is an expenditure versus a contribution, I think it clear from the legislative history, and even without reading the entire legislative history, just merely reading the Supreme Court decision in Auto Workers, that an expenditure is a particular type of activity, a very narrow type of activity. It is activity by a labor organization or a corporation involving the engagement of a service or some other activity for its own benefit, the incidental effect of which may benefit some person in a particular campaign. A contribution, on the other hand, is everything else.

I think that is crystal clear, your Honor, and moreover I point out that the addition of the word "expenditure" to the statute in 1947 is a demonstration of an overabundance of caution. I suggest, your Honor, that the very activity that was engaged in by, I believe it was

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P.A.C.E., the Political Action Committee, was a contribution and had there been some guidance from the courts, which at the time there was not, there had been no decisions, that in light of the broad definition of that term, that activity would have been a contribution, and we would not have been in this quagmire of what is a contribution and what is an expenditure.

In any event, your Honor, I suggest that what we have in this case, beyond any doubt, is a contribution and nothing more.

The remaining issue, your Honor, is the Constitutional question and that has been briefed in our submission. It is a question which has been ruled upon by two Courts. In United States v. Boyle it was ruled on; the exact arguments raised by Mr. Chestnut were considered and rejected on the ground that, well, there are First Amendment rights that unions and corporations have. There is a compelling need to protect the integrity of the election processes. The statute, 610, does not infringe upon that right, does not drive individual union members or individual stockholders from performing any activity that they wish to engage in in connection with the campaign. It merely precludes organizations per se from using vast sums of money for purposes which members of the union or

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stockholders might be opposed to.

On the question of vagueness, I think a reading of the statute makes it absolutely clear that the statute is unambiguous unless one wishes to engage in a semantic type of argument that has been engaged in here on the questio of what is a contribution, what is an expenditure. The statute is clear on its face. Proscribed conduct reaches out to anybody who is familiar with the statute and tells you what you cannot do.

THE COURT: You say the statute is not only clear but the indictment is clear?

MR. BANNIGAN: The indictment on its face couldn't be clearer. The words, "payment and service," that counsel for Mr. Chestnut so vehemently focux on, they are the means clause. They are merely describing how this contribution was consummated, that is the technical details of the movement of the check from one part of the country to another part.

THE COURT: What it alleges, in effect, is instead of the Milk Producers making a direct contribution to the campaign fund, at the suggestion of the defendant they made it to a third party, to pick up the tab.

MR. BANNIGAN: And, your Honor, if anybody wishes to characterize that as an indirect contribution, I submit

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that notwithstanding argument counsel may make that indirect types of contributions were not proscribed under the 1970 version, I suggest counsel consult United States v. Boyle, in which the Court clearly held that since Congress intended to exclude all types of contributions, it necessarily intended both direct and indirect contributions to be prohibited.

Your Honor, I have nothing further to say.

THE COURT: I think what you ought to do, since apparently there is some difference of opinion as to what you agreed upon as far as discovery is concerned, is to confer with Mr. Nordby and his associates and see if there are any open items and then we can pick them up later on.

MR. BANNIGAN: Very well.

MR. NORDBY: Your Honor, in that regard, may we amend orally our discovery request to ask the Government to tell us, if it knows, or find out if it does not, whether the 1972 statute was presented to the grand jury or the 190 statute or neither, and whether the indictment was drafted under the 1970 or the 1972 statute? Perhaps the answer is not so difficult to find.

THE COURT: I am sure whatever the answer is, it won't satisfy you.

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MR. NORDBY: I only hope it satisfies the Court.

MR. BANNIGAN: Your Honor, all I can say in that regard is I have spoken to Mr. Turcom who presented the case to the grand jury, and he advises me that he is fully aware the statute was amended in 1972, but beyond that I am not at liberty to discuss the proceedings in the federal grand jury in this District.

THE COURT: All right.

(Recess)

THE COURT: What do we have open?

MR. THOMSON: Perhpas I could go through the three discovery motions, your Honor, and tell the Court what is open,and those matters that they have not agreed to give us we would rest with the determination of the Court based upon a showing we have already made in our affidavit and memorandums.

As to the motion for production of the grand jury minutes, it is my understanding that the Government would give that within the purview of 3500 material. And we have urged at pretrial that would be the conflict there.

THE COURT: This is a requirement that if a witness should testify at the trial and he was also a witness

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before the grand jury, that is considered 3500 material in this indictment.

And for your own information, so you may have some idea how I would have ruled on your motion for inspection now, I was the judge who decided the Costello case against giving the grand jury minutes, that went to the Supreme Court.

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MR. THOMSON: Secondly, your Honor, the motion for a bill of particulars, it is my understanding that as we have categorized twelve areas as to particularly one and two, the Government will give that.

Perhaps my notes are somewhat sketchy and I believe Mr. Bannigan has been a little more comprehensive on what he will give and perhaps he can state for the record as to our motion for a bill of particulars what they will particularize, and to the extent that they won't, we request that we would urge that upon the Court also.

MR. BANNIGAN: Very well.

Your Honor, with respect to the defendant's demand for a bill of particulars the Government has consented to provide items one and two.

It declines or objects - I better phrase that -- to provide the information sought in items 3, 4, 6, 8, 9, 10, 11 and 12.

THE COURT: Hold it. 3?

MR. BANNIGAN: 3, 4, 6, 8, 9, 10, 11 and 12, except to the extent that the information called for by those items has already been furnished in paragraphs 5 through 7 of the affidavit that we submitted in this case.

Paragraphs 5 through 7 set out in broad outline the Government's proof in this case, and we have agreed

to incorporate that material in a bill of particulars.

THE COURT: What is 5, 5 of the bill of particulars?

MR. BANNIGAN: 5 and 7 -- 5 calls for the disclosure of the identity of the Government's witnesses, and we oppose that.

7 calls for-

THE COURT: Name, address and job title of the official of Lennon & Newell?

MR. BANNIGAN: Yes, your Honor, we oppose that on the same grounds, that it would call for disclosure of the Government's witnesses.

THE COURT: What else?

That would conclude the motion for a bill of particulars.

We might turn then to the motion for discovery. Where is that?

MR. THOMSON: I believe it is entitled,your Honor, Motion ofr Discovery and Inspection.

THE COURT: I see Points and Authorities in Support of Motion, but where is the motion itself? I see the motion for a bill.

MR. BANNIGAN: I have a copy here.

THE COURT: I think I recall what's in it.

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MR. BANNIGAN: With respect to the Item 1 captioned Rule 6A Material, the Government has consented to supply all the materials requested in paragraphs 1 and 2 with the exception of any oral statements made by the defendant.

With respect to Item 2, captioned Rule 16B Material, the Government is opposed to the disclosure sought or the inspection sought by paragraphs 1, 2 --

THE COURT: What is involved here? Is it anything more than the checks that were -

MR. BANNIGAN: Yes, there is, your Honor.

THE COURT: There is?

MR. BANNIGAN: There are invoices that the Government alleges Mr. Chestnut caused to be prepared, caused to be sent.

THE COURT: What are you doing about the checks? Are you giving them copies of the checks?

MR. BANNIGAN: They have copies of the checks.

THE COURT: What is the objection to giving them copies of the invoices?

MR. BANNIGAN: Well, the objection, your Honor, was to the scope of this request. It calls, as I read it, for everything in my file, and there has been no specific --

THE COURT: I am trying to understand. If this

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should go to trial, I assume that obviously you will offer the checks in evidence.

MR. BANNIGAN: Most certainly.

THE COURT: Would you offer the invoices, too?

MR. BANNIGAN: Most certainly.

THE COURT: Why don't you give them a copy of the invoices?

MR. BANNIGAN: I will give them that.

MR. COCHRANE: Your Honor, perhaps I can clarify something.

John Cochrane, for the record.

There are two problems: We do not have and were never served with the endorsements on the checks.

THE COURT: Did you get the checks? I assume you got the front and back of the checks.

MR. COCHRANE: We have only seen the front of the checks.

MR.BANNIGAN: It was my understanding the Special Prosecutor furnished the checks. I assumed they got the front and back.

MR.COCHRANE:They only gave us the front.

THE COURT: You will get the back.

MR. BANNIGAN: We will give them the back.

MR. COCHRANE: May I also point out the question

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of the identity of these people and we are not trying to make an incursion into the Government's file, but Lennon Newell is a bankrupt operation. It is no longer a functioning company, and the people have been dispersed.

THE COURT: When did they go under?

MR. COCHRANE: Couple of -- three years ago, your Honor.

THE COURT: What was a very well-known advertising firm for many, many years.

MR. COCHRANE: One of the largest billings in the country.

MR. BANNIGAN: Shortly after the Nixon campaign, I believe, your Honor.

THE COURT: Are you suggesting cause and effect?

MR. BANNIGAN: I am not suggesting anything.

MR. COCHRANE: But that makes it difficult for us to investigate the case. All their files and records, everything, of course, are in the custody of trustee, and they are very, very difficult a very expensive process, and this gives some special cause --

THE COURT: Actually if it goes to trial I think it is a comparatively simple case and the documents --

MR. COCHRANE: We wouldn't want to be remiss in our duty to investigate the case and interview witnesses

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if it is in the interests of justice.

THE COURT: What else do you have?

MR. BANNIGAN: Your Honor, you have asked that I turn the invoices over and the backs of the checks.

To be fair, let me suggest a resolution of Paragraph 1 by stating that I will turn over to defense counsel all documents which I reasonably believe will be used at the trial.

THE COURT: That is very fair. You can't ask more than that. I think defense counsel agree that you are very fair on that.

They are exercising a constitutional right against self-incrimination. They refuse to answer.

MR. BANNIGAN: Paragraph 2 we are opposed to on the ground it calls for our witnesses again.

Similarly, Paragraph 3, although not directly --

THE COURT: You agree to give them in the event any witnesses are called who have prior criminal convictions, the information?

MR. BANNIGAN: I have so stated in my affidavit that that material will be furnished to the extent that we have it.

I might also point out, your Honor, that with respect to a lot of these requests, I have advised counsel,

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for example, in the area of Brady material, in the area of the Jencks Act material, that all of this material will be provided to them a sufficient time before the trial in my view, to make use of it; although I feel no obligation, legal obligation to do so prior, for example, to calling a witness.

THE COURT: I take it you will comply with the rule in our Circuit under Brady and furnish whatever information there is.

MR. BANNIGAN: Yes, certainly, your Honor.

THE COURT: Under the Brady rule, or make the representation.

MR. BANNIGAN: I have made that representation, your Honor, in my affidavit, and I make it on the record.

With respect to Paragraph 4 of Rule 16B, I have stated in the affidavit that I am unaware-- I mean the Government is unaware-- of any such recorded statements.

THE COURT: Where is Paragraph 4?

MR. BANNIGAN: Bottom of the page. It asks for any and all written or recorded statements made concerning this cause by any persons who are not prospective witnesses.

THE COURT: I don't see that. Paragraph 4?

MR. THOMSON: It is under II, under the 16B material. It is Paragraph 4 under that.

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THE COURT: I see.

Yes, go ahead.

MR. BANNIGAN: That, your Honor, concludes that portion of the request.

There is then a Roman III item, materials regarding the grand jury, which I believe your Honor has to some extent commented on earlier.

With respect to Paragraph 4, I have furnished at your Honor's request earlier the memoranda of the Justice Department concerning the assignment of this case.

THE COURT: Any great secret in it?

MR. BANNIGAN: No, your Honor.

THE COURT: All right.

I believe that concludes it.

I will go over these other items that the Government has not consented to and see if there are any that they should.

MR. COCHRANE: I should inform the Court that extensive testimony was taken before a grand jury in Washington, D.C. on this matter. Mr. Chestnut in fact was subpoenaed and Mr. Chestnut did in fact appear and testify several times in front of the Ervin Committee.

Our question is, and I think one of the things that we are looking at is, what was presented to the grand jury

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mpb:mg 9

in Washington that we would be entitled to under these various motions?

THE COURT: What is there that you would be entitled to?

MR. COCHRANE: Any exculpatory statement.

THE COURT: That would be Mr. Chestnut's own statements?

MR. COCHRANE: No, but the witnesses, Brady material, or anything the Government would have under Brady.

THE COURT: I take it that counsel will bear that in mind, is that correct?

MR. BANNIGAN: Your Honor, I have advised counsel here on the record with respect to Brady material and in my room, prior to coming here. I will be bound --

THE COURT: If there is anything in the grand jury minutes in the District of Columbia that is exculpatory, you will turn it over.

MR. BANNIGAN: That is correct.

THE COURT: Allright, gentlemen.

MR. THOMSON: May I state just for the record in summary;I believe that we had indicated that the case that has not been submitted that Mr. Bannigan will furnish us, that we would have an opportunity to respond to that in

a written memorandum.

THE COURT: How much time do you want on that?

MR. THOMSON: I would like to have a week to ten days.

THE COURT: I was going to say -- well, depending of course on the disposition of your motion, I would like some idea first of time, but do you need a week or ten days? Can't you get this in by Friday? You are going back tonight. Can't you--

MR. THOMSON: We haven't received the case yet.

THE COURT: You have not?

MR. BANNIGAN: No,your Honor, I don't -- just to be clear, I don't think I have to advise counsel I am going to provide them with this case. I have given them the name of the case.

It is United States v. American Shipbuilding.

THE COURT: Do you have the citation?

MR. BANNIGAN: No, I don't, your Honor. It is a case decided, I believe, in the Northern District of Ohio, involving a 1970 -

THE COURT: Do you have a copy of it upstairs?

MR. BANNIGAN: It is not available, even through our computer, and it is not on the computer.

THE COURT: What is the computer you have where

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you get these? Tell me about this.

MR.BANNIGAN: It is a magic instrument. The computer is linked into a public company that collects all federal opinions and puts them on a computer.

THE COURT: On a daily basis?

MR. BANNIGAN: Yes, your Honor, supposedly on a daily basis.

THE COURT: You mean they'd have an opinion of mine out before I really finished it,something like that?

MR. BANNIGAN: If the bar was so fortunate.

THE COURT: Tell me, what is your time estimate in case this matter goes to trial?

MR. BANNIGAN: Your Honor, I am firmly of the view that this case can be tried in two days, three at the outside.

THE COURT: Does that accord with your view, Counsel?

MR. COCHRANE: Well--

THE COURT: Just generally.

MR. COCHRANE: I would say it would be salutory to hope for a two-day trial. I think we have some defense, your Honor, and we would have to in candor tell the Court to make it a little longer.

THE COURT: I will be in touch with you in the

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event you make a disposition of your motion that requires a trial, and try to fix a date for trial.

Do you gentlemen have any preference?

MR. BANNIGAN: Yes, your Honor. The Government does.

THE COURT: Would you like it tried Monday morning?

MR. BANNIGAN: No, unfortunately, your Honor, although I would like to see this case tried immediately, I would request that it not be scheduled until the end of April. My reason for that is that the key Government witness entered the hospital at the end of last week, beginning of this week. He has a serious heart problem, heart lesions on valves.

Aside from that, he is scheduled to appear as a witness in a case of United States v. Connally which is already scheduled for April 1st in Washington, D. C.

Because of the witness' ill health, he is unable to fly. When he travels from his home state, which is in Texas, he has to drive.

In conjunction with the Special Prosecutor's office we have tried to work out an arrangement so that the witness could be brought to Washington to be prepared for the Connally case, and then as soon as he has completed that

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case, perhaps come to New York for this case, and then return to Washington for another case in which he is testifying.

THE COURT: Then I take it you have no objection, do you, defense counsel?

MR. THOMSON: No, we don't, your Honor. As a matter of fact, we discussed this with Mr. Bannigan before regarding a late April setting.

THE COURT: Then what I would probably do, if that is the situation, I would probably set this down-- why don't we do this now subject to my disposition on the motions you gentlemen made-- set this down for trial for the first Monday in May, which would be May 5th. Then you have a date and put it down now.

MR. NORDBY: Your Honor, as Mr. Bannigan indicated, he provided us with the internal document regarding delegation of authority on this case. In view of the relatively late setting of the date for trial, could we ask the Court to have until the end of next week to file a motion and brief if we think one is meritorious on that issue?

I can't tell from looking at the documents themselves whether such motion would be brought, but we'd like to reserve that right.

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THE COURT: If you decide to bring the motion, make it returnable next Tuesday. You have the papers now, and you can present an order to show cause and make it returnable next Tuesday afternoon, and I will give you one week to get in whatever other papers you have that you want to submit that we referred to before.

MR. NORDBY: Thank you, your Honor.

...

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
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74 Cr. 1191

Except as consented to by the government and as set forth in the affidavit of the Assistant United States Attorney, the motion for a bill of particulars is denied. The indictment, the matter contained in the aforesaid affidavit and the material to be made available for inspection and discovery furnishes the defendant with complete particulars sufficient to enable him to defend the charges in the indictment. Wong Tai v. United States, 273 U.S. 77 (1927).

Dated: New York, N. Y.
April 8, 1975

United States District Judge

U.S. DISTRICT COURT
FILED
APR 9 1975
S.D. OF N.Y.

74 Cr. 1191

The court assumes, upon the government's representation, that it will comply with the Brady v. Maryland rule, 373 U.S. 83 (1963).

Dated: New York, N. Y.
April 8, 1975

United States District Judge

U. S. DISTRICT COURT
FILED
APR 9 1975
S. D. OF N. Y.

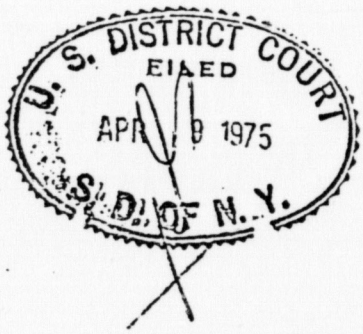
MICROFILM

74 Cr. 1191

The motion for discovery and inspection is denied except as consented to by the government.

Dated: New York, N. Y.
April 8, 1975

United States District Judge



74 Cr. 1191

The motion for an inspection of the grand jury minutes is denied; so, too, is the motion for inspection of the grand jury minutes taken in the District of Columbia. However, if required pursuant to 18 U.S.C., section 3500, they will be made available to the defendant pursuant thereto.

Dated: New York, N. Y.
April 8, 1975

United States District Judge

U.S. DISTRICT COURT
FILED
APR 8 1975
S.D. OF N.Y.

MICROFILM
APR 09 1975

EFB:ko
74-4046

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA,

-v-

JACK L. CHESTNUT,

Defendant.

----------x

BILL OF PARTICULARS

74 Cr. 1191

S I R S:

The United States of America, as and for its Bill of Particulars herein, alleges:

1. As to Items 1 and 2: In late March or early April, 1970, Chestnut telephonically contacted a representative of Lennen & Newell, Inc. ("L&N") in New York and instructed him to send L&N's monthly bill for services rendered to the Humphrey Campaign to American Milk Producers, Inc. ("AMPI") for payment. In accordance with Chestnut's instruction L & N prepared invoices in New York and sent them to AMPI, New Ulm, Minnesota.

On May 12, 1970, Chestnut, having come into possession of similar invoices, forwarded them to Bob Lilly, at Associated Milk Producers, Inc., 1011 N. W. Military, San Antonio, Texas. On June 1, 1970, Lilly mailed a $6,000 AMPI check, drawn on The Alamo National Bank of San Antonio, Texas and made payable to Lennen & Newell, Inc., to Chestnut at the latter's law offices in Minneapolis, Minnesota. On June 11, 1970, Lilly sent a second similarly drawn check for $6,000 to Chestnut at the same address. Both of these checks were eventually forwarded to L & N in

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74-4046

New York where they were deposited to L & N's general account at Bankers Trust Company. The first check was deposited in New York on June 9, 1970 and the second on June 22, 1970.

Dated: New York, New York
April 3, 1975

Yours, etc.

PAUL J. CURRAN
United States Attorney for the
Southern District of New York
Attorney for the United States
of America.

By:_____
EUGENE F. BANNIGAN
Assistant United States Attorney
Office & Post Office Address:
United States Courthouse
Foley Square
New York, New York 10007
Tel. (212) 791-0073

TO:
Douglas W. Thomson, Esq.
Messrs: Thomson, Wylde,
Norby & Friedberg
Suite 1530
Fifty-Five East Fifth Street
Saint Paul, Minnesota 55101

John A. Cochrane, Esq.
Cochrane & Bresnahan, Esqs.
830 Minnesota Building
Saint Paul, Minnesota.

UNITED STATES OF AMERICA,

-against- 74 Cr. 1191

JACK L. CHESTNUT,

Defendant.

DEFENDANT'S MOTION FOR TRANSFER
FROM THE DISTRICT FOR TRIAL

Comes now the defendant, by his attorney, and respectfully moves the Court pursuant to Rule 21(b), Federal Rules of Criminal Procedure, for an Order transferring the above-entitled action from the Southern District of New York to the District of Minnesota for the convenience of the parties, witnesses and in the interest of justice as set forth more fully in the affidavit attached hereto.

Respectfully submitted,

Douglas W. Thomson

Jack S. Nordby

THOMSON, WYLDE, NORDBY & FRIEDBERG
Suite 1530 - 55 East 6th Street
Saint Paul, Minnesota 55101
(612) 227-0856

John A. Cochrane

COCHRANE & BRESNAHAN
830 Minnesota Building
Saint Paul, Minnesota 55101
(612) 224-7505

Dated: Saint Paul, Minnesota
April 21, 1975

-against- 74 Cr. 1191

JACK L. CHESTNUT,

Defendant.

AFFIDAVIT

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

DOUGLAS W. THOMSON, being first duly sworn on oath, deposes and says:

1. That he is one of the attorneys for the defendant in the above-entitled action.

2. Upon the basis of the information available to him regarding this prosecution all of the acts allegedly committed by the defendant and all of the other acts pertinent to this law suit occurred in the State of Minnesota and the only nexus with the Southern District of New York appears to be an alleged telephone call and the deposit of certain checks in this district.

3. So far as your affiant is able to determine on the basis of discovery to date, the probable witnesses for the prosecution in this case would come primarily from the State of Minnesota and the State of Texas.

4. The defense anticipates calling a number of witnesses including character witnesses numbering potentially more than 20 who reside and are occupied in the State of Minnesota.

5. The defendant lives and works in the State of Minnesota and his business and personal affairs would be substantially more disrupted by trial in the Southern District of New York.

6. Because of the larger number of witnesses in the State of Minnesota and the location of the defendant and his

counsel in the State of Minnesota the expense to the parties would be materially increased by trial in the Southern District of New York.

7. To your affiant's knowledge upon the basis of discovery made to date, there is no large volume of documentary evidence located in the Southern District of New York which would cause transportation problems if the matter were tried in Minnesota.

8. Your affiant is aware of no aspect of this prosecution which would inconvenience the government except for the location of the prosecuting attorney in charge of the case in the Southern District of New York.

Further affiant sayeth not.

Douglas W. Thomson

DOUGLAS W. THOMSON

Subscribed and sworn to before me
this 21st day of April, 1975.

Marilyn Robertson

Notary Public

MARILYN ROBERTSON
NOTARY PUBLIC - MINNESOTA
Dakota COUNTY
My Comm. expires April 25 1979

UNITED STATES OF AMERICA :

-v- AFFIDAVIT

: 74 Cr. 1191 (EW)

JACK L. CHESTNUT,

Defendant. :

----------x

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

EUGENE F. BANNIGAN, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and I am in charge of the prosecution of the above-captioned matter. This affidavit is submitted in opposition to the defendant Jack L. Chestnut's application, pursuant to Rule 21(b) of the Federal Rules of Criminal Procedure, to transfer this case to the District of Minnesota for trial.

2. Ten days prior to the commencement of trial herein -- and following the denial of motions for sweeping pre-trial relief -- Chestnut now urges, for the first time, that this case be tried in his home state of Minnesota in order to enhance the convenience of the witnesses and parties. Chestnut's moving papers virtually concede that the information upon which this eleventh-hour application is based was provided by the Government to defense counsel months

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for the delay in bringing this application accentuates the obvious purpose for the relief now sought, namely: (i) to delay the trial of this case; and (ii) to eventually have this matter tried in his home state where he undoubtedly expects a climate more receptive and favorable to his cause.

3. Chestnut's contention that this case should be tried in Minnesota because it is the most convenient forum for the parties and witnesses is without merit.* The Government's two principal witnesses presently reside in New York City and Connecticut, respectively. One of these witnesses Bob A. Lilly, a resident of Texas, arrived in New York on April 21, 1975 for the sole purpose of testifying at the trial of this matter. Mr. Lilly, as the letters from Dr. James R. O'Neill, copies of which are annexed hereto as exhibit A, attest, suffers from valvular heart disease which not only substantially limits his ability to engage in extensive travel but also requires that when traveling he be accompanied by his wife. At the conclusion of the trial of this matter Mr. Lilly is also to appear as a Government witness in United States v. Russell, a criminal trial which I am advised is to be scheduled to commence in the United States District Court for the Western District of Texas on or about May 27, 1975. Moreover, Mr. Lilly has informed me that following that trial, he expects to undergo open-heart surgery.

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* See the affidavit of Assistant United States Attorney Eugene F. Bannigan, sworn to on February 4, 1975 and filed that same day in opposition to Chestnut's pre-trial motions, and the Government's Bill of Particulars filed on April 3, 1975.

that if this case is transferred to Minnesota, even for an immediate trial,* it would result in a substantial hardship and inconvenience to Mr. Lilly and his wife, and would likely interfere with the contemplated trial date in the Russell matter. Moreover, if an immediate trial could not be had in Minnesota, it is more than probable that the earliest date that could be fixed for a trial of this case in Minnesota would be one following the conclusion of the Russell matter and the outcome of Mr. Lilly's "high risk" surgery. Such a delay, it is submitted, would obviously jeopardize this prosecution, which was scheduled to proceed to trial on a fixed and agreed upon date more than two months ago.

5. Chestnut's belated concern for the "more than 20" character witnesses he intends to call on his behalf is unwarranted and an ill-considered ploy urged upon this Court in support of the requested relief. It is inconceivable that this Court, in the exercise of its sound discretion, would ever permit Chestnut to call the number of character witnesses his moving papers suggest. In light of the Second Circuit's recent pronouncement in United States v. Zane, 495 F.2d 683, 693 (2d Cir. 1974), it would be inappropriate for Chestnut to offer character testimony from more than one-quarter of the contemplated number of witnesses.

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* The moving papers fail to state the present condition of the trial calendar of the United States District Court for the District of Minnesota and thus give no hint of when a trial in that district would likely proceed.

EFB:sk

6. Chestnut has also failed to confront the obvious fact that if this case is transferred to Minnesota, it will inevitably generate substantial publicity with the attendant prejudice which, hopefully, all parties actively seek to minimize.

WHEREFORE, it is respectfully submitted that Chestnut has failed to make a compelling demonstration that the convenience of the witnesses and parties and the interests of justice would be best served by transferring this case to Minnesota; accordingly it is urged that the instant application be denied in all respects.

EUGENE F. BANNIGAN
Assistant United States Attorney

Sworn to before me this

day of April, 1975.

THE DIAGNOSTIC CLINIC
OF
SAN ANTONIO, P.A.

4647 MEDICAL DRIVE
SAN ANTONIO, TEXAS 78284

TELEPHONE 696-5420

INTERNAL MEDICINE

RAYMOND S. BORSHEIM, M.D.
Internal Medicine

JAMES I. COUGHLIN, M.D.
Nephrology

JAMES M. DUNCAN, M.D.
Gastroenterology

BERNARD T. FEIN, M.D.
Allergy - Immunology

NORMAN L. JACOBSON, M.D.
Internal Medicine

LEOPOLDO LAPUERTA, M.D.
Chest Diseases

CHARLES J. LERNER, M.D.
Infectious Diseases

JAMES D. O'KEEFE, M.D.
Cardiology

JAMES R. O'NEILL, M.D.
Cardiology

BARRY A. PORTNOY, M.D.
Hematology

SYDNEY SCHIFFER, M.D.
Cardiology
Diabetes

NEUROLOGY

MORRIS H. LAMPERT, M.D.

MICHAEL ZUFLACHT, M.D.

PSYCHIATRY

WILLIAM B. DONOVAN, M.D.

WILLARD C. SCHWARTZ, M.D.

RADIOLOGY

JOSE M. CHAO, M.D.

November 13, 1973

TO WHOM IT MAY CONCERN:

RE: Mr. Robert Lilly

Mr. Robert Lilly has been under my care since his hospitalization on July 8, 1973. He had had surgery for a left indirect inguinal hernia on the 5th of July, 1973 and this was complicated by a pulmonary embolis which necessitated his re-admission on the 8th of July, 1973. Because of the pulmonary embolis a filter was inserted in the inferior vena cava.

He is at this time still recovering from the effects of this illness and the operation. The illness is complicated with valvular heart disease probably on the basis of rheumatic fever with involvement primarily of the aortic valve. This patient has not recovered enough at this time to appear before the Committee in a public session.

Sincerely yours,

James R. O'Neill MD.

James R. O'Neill, M.D.

JRON:pkn

THE DIAGNOSTIC CLINIC
OF
SAN ANTONIO, P.A.

4647 MEDICAL DRIVE
SAN ANTONIO, TEXAS 78284

TELEPHONE 696-5420

11 March 1974

INTERNAL MEDICINE

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Diabetes - Endocrinology

DERMATOLOGY

ARTHUR W. RICHARDSON, M.D.

NEUROLOGY

MORRIS H. LAMPERT, M.D.

MICHAEL ZULFLACHT, M.D.

PSYCHIATRY

WILLIAM B. DONOVAN, M.D.

WILLARD C. SCHWARTZ, M.D.

RADIOLOGY

JOSE M. CHAO, M.D.

TO WHOM IT MAY CONCERN:

RE: Mr. Robert A. Lilly

Mr. Bob Lilly is a patient in the San Antonio Community Hospital, under my care. He was admitted because of an episode of cerebral dysrhythmia with weakness and loss of speech, apparently secondary to a cerebral embolus.

In the past, this patient, of course, has had numerous pulmonary emboli. Studies were done with reference to the etiology of the embolic phenomenon and it was felt after cardiac catheterization, that the emboli may well originate on a calcific aortic valve. The probable origin of the calcific aortic valve disease is old rheumatic fever.

The patient is recuperating at this time and is doing fairly well, but I feel that he should continue recuperation for another two weeks before returning to any business activities.

Sincerely yours,

JR O'Neill

JAMES R. O'NEILL, M.D.

JRO'N:am

RECEIVED
MAR 12 1974

THE DIAGNOSTIC CLINIC
OF
SAN ANTONIO, P.A.

4647 MEDICAL DRIVE
SAN ANTONIO, TEXAS 78284

TELEPHONE 696-5420

TERNAL MEDICINE

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MORRIS H. LAMPERT, M.D.

MICHAEL ZULFLACHT, M.D.

PSYCHIATRY

WILLIAM B. DONOVAN, M.D.

WILLARD C. SCHWARTZ, M.D.

RADIOLOGY

JOSE M. CHAO, M.D.

March 27, 1974

TO WHOM IT MAY CONCERN:

Re: Bob A. Lilly

This man has been under my care since his hospitalization at Santa Rosa Medical Center in July, 1973. At that time a hernia was repaired complicated by pulmonary emboli. Since that time he has had further embolization inspite of a filter in the inferior vena cava. In addition, there are symptoms of cerebrovascular insufficiency. He is known to have valvular heart disease with the aortic valve involved. This combination of circumstances has disabled Mr. Lilly and I feel that this will be a permanent disability.

Sincerely yours,

James R. O'Neill M.D.

James R. O'Neill, M.D.
JRON/je

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA - vs - JACK L. CHESTNUT	74 CRIM 1191

29 April, 1975

Before: HON. EDWARD WEINFELD, United States District Judge

A p p e a r a n c e s :

For The Government: EUGENE F. BANNIGAN, Assistant United States Attorney

For The Defendant: DOUGLAS THOMSON, ESQ.
JOHN A. COCHRANE, ESQ.

- o -

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. 7-4580

THE CLERK: United States of America versus Jack L. Chestnut.

Is The Government ready?

MR. KAUFMAN: The Government is ready, Your Honour.

THE CLERK: Is the defendant ready?

MR. THOMSON: Defendant is ready, Your Honour.

THE COURT: You may proceed.

MR. THOMSON: If it pleases The Court, we have filed a motion --

THE COURT: State your name for the record, please.

MR. THOMSON: My name is Douglas Thomson, my address is 55 East Fifth Street, St. Paul, Minnesota.

We have filed a motion pursuant to Rule 21 (b) of The Federal Rules of criminal procedure for a transfer of the trial of this case from this district to the district of Minnesota. As a factual basis for the motion, Your Honour, we have filed an affidavit, and also a memorandum of law regarding our legal grounds for the motion.

I have nothing further to add to what has been filed. However, I have been served with an affidavit from The United States Attorney's office, and

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without information to traverse anything regarding the physical conditions of their witnesses, there is mention regarding character witnesses that we anticipate calling, and they had cited United States versus Zane, a Second Circuit case, regarding the limitation of character witnesses.

One thing I can say in that regard, it would appear that the Zane decision merely indicated that it was discretionary with The Court to limit --

THE COURT: I should tell you now, Mr. Thomson, I would never permit, and I have never permitted the calling of twenty character witnesses. We are now at the point of diminishing returns, and it reaches the outer limits of cumulative evidence, and subject to the disposition I make of your pending motion, if this case is tried here now you may as well make up your mind you are never going to call twenty character witnesses in any case before me. It almost gets to the point of absurdity. I say that with due respect to you and your colleagues.

MR. THOMSON: I have nothing further regarding --

THE COURT: Are you suggesting that you would be permitted to call that many witnesses in Minnesota, character witnesses?

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MR. THOMSON: I am sorry, Your Honour. Did you address a question to me? Do I anticipate calling character witnesses? Yes, we do.

THE COURT: All right. Have you finished your argument?

MR. THOMSON: Yes, I have.

THE COURT: I have one question to ask you. This case was set for trial -- you have the record Mr. Clerk of the date --

THE CLERK: It was set on May 4th, Your Honour.

THE COURT: On May 4th. And your time to make motions expired on January 16th. Why did you wait until the eve of trial to make this motion?

MR. THOMSON: We waited, Your Honour, until such time as The Court ruled on our Rule 12 motion to dismiss.

THE COURT: Well, that has nothing to do at all with it. A motion under the rule that you have just referred to based on the facts upon which you rely should have been made immediately within the ten day period.

MR. THOMSON: Well, we at that --

THE COURT: And even assuming that you waited for my ruling on your motion to dismiss the indictment

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that was handed down a little while ago.

MR. THOMSON: Well, it is our position, Your Honour, that it would have been premature prior to the rendering of your decision on our motion to dismiss.

THE COURT: You could have made it at the same time. You were given ten days to make motions. That applied to all motions. You made a series of motions when you made the motion to dismiss. You didn't confine yourself to one motion.

All right, I will hear The Government.

MR. BANNIGAN: Your Honour, The Government has nothing to add to its affidavit. It fully sets forth the physical condition of one of the key witnesses in this case, with supporting documents, and unless Your Honour has some questions related to some of the other witnesses that The Government contemplates calling to balance the convenience of the parties, I have nothing to add to the affidavit submitted.

THE COURT: This motion is made on the eve of trial which was set more than three months ago. The defendant was given ten days following his arraignment to make motions. I believe those ten days expired on January 16th. There is no adequate explanation in this record for this zero hour motion to transfer the case

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to another district with the inevitable delay that would take place.

Moreover, upon the facts presented it would be highly prejudicial to The Government's case to transfer the case, this indictment, to another district. The motion is denied.

And, counsel for the defendant, I am now notifying you that you will not call twenty character witnesses in any trial before me. You will be limited to a reasonable number.

MR. BANNIGAN: Thank you, Your Honour.

MR. THOMSON: Thank you, Your Honour.

THE COURT: Now, the case is set for when? Next Monday morning?

MR. THOMSON: That's correct, Your Honour.

MR. COCHRANE: Yes, Your Honour, May 5th.

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SOUTHERN DIST. CT COURT REPORTERS U.S. COURTHOUSE

JACK L. CHESTNUT,)
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DEFENDANT.)
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MOTION TO DISMISS THE INDICTMENT
ON THE GROUNDS OF DUPLICITY
OR TO REQUIRE THE GOVERNMENT
TO ELECT WHICH OFFENSE TO TRY

The defendant, JACK L. CHESTNUT, by his attorneys, DOUGLAS W. THOMSON and JOHN A. COCHRANE, respectfully moves the Court for an Order dismissing the Indictment herein on the grounds that it is duplicitous in that it contains two separate and distinct offenses within a single Count. In the alternative, the defendant moves the Court for an Order requiring the Government to elect which offense to try, for the reasons set forth more fully in the Memorandum attached hereto.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-v- : 74 Cr. 1191 (EW)

JACK L. CHESTNUT, :

Defendant. :

----------x

GOVERNMENT'S MEMORANDUM OF LAW ON THE ADMISSIBILITY OF EVIDENCE OF CHESTNUT'S PRIOR AND SUBSEQUENT CRIMINAL CONDUCT

Preliminary Statement

One of the essential elements that the Government will be required to prove beyond a reasonable doubt in order to sustain the single charge in the instant indictment is that the defendant Chestnut wilfully received and accepted on behalf of the 1970 senatorial campaign of Senator Hubert H. Humphrey an illegal corporate contribution from Associated Milk Producers, Inc. Absent proof of wilfullness, the jury, assuming adequate evidence on the other elements of the charged offense, could return a guilty verdict only on the lesser included misdemeanor ~~or~~ offense. Accordingly, to establish that Chestnut's conduct was wilful and intentional as opposed to mistake and inadvertence, the Government, at

trial, with leave of the Court, will elicit testimony that the defendant engaged in criminal conduct substantially similar to that charged in the indictment both prior and subsequent to the transaction in issue. This memorandum is submitted in support of the Government's position that such evidence is admissible.

Facts

The Conduct Charged In The Indictment

The evidence will establish that Chestnut, as campaign manager for Hubert H. Humphrey's 1970 Senatorial Campaign for the office of United States Senator from the State of Minnesota, engaged the services of Lennen & Newell, Inc. ("L&N") a New York Advertising firm, to perform certain advertising services on behalf of the campaign. In March or April, 1970 Chestnut contacted L&N and advised them to send their next billings for services rendered to the campaign to Associated Milk Producer, Inc., ("AMPI"), which would pay them. Chestnut explained to L&N that campaign contributions were not being received as had been anticipated; and therefore, he had arranged with AMPI to pay L&N's monthly invoices. In accordance with Chestnuts' instructions, L&N prepared invoices in the amount of $12,000 and sent them to AMPI, care of Bob A. Lilly. The invoices were received by Lilly

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in late April and early May 1970, and paid by two $6,000 AMPI checks, dated June 1 and 11, 1970, respectively. Both checks were sent by Lilly to Chestnut at his law offices in Minnesota and were eventually forwarded from there to L&N in New York.

In connection with the L&N matter, Bob A. Lilly will testify that Harold Nelson, AMPI's General Manager, instructed him to pay the L&N invoices from corporate funds and to make the necessary arrangements for payments with Chestnut.

The Similar Acts

April through May, 1970

At approximately the same time Nelson advised Lilly to pay the L&N invoices, he also instructed Lilly to send an additional $10,000 to Chestnut. Lilly complied with this request by first, borrowing the money from a bank in San Antonio, Texas, second, depositing the proceeds of the loan in his personal checking account and third, writing a check to the Minnesota Democratic Campaign Committee, which he forwarded to Chestnut. Lilly will testify that Chestnut instructed him to make the single check payable to the Minnesota Democratic Campaign Committee. Lilly will also testify that he repaid the $10,000 loan with AMPI corporate funds.

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The $10,000 Lilly check was not only a disguised illegal corporate contribution virtually identical to the L&N payments, but was also independantly illegal because it violated Title 18, U.S.C., Section 608 (1970), which made it a crime for any person or organization to contribute more than $5,000 in any one calendar year to a single campaign committee.

June 1970

During the very week that Lilly sent the final $6,000 AMPI check to Chestnut in payment of the L&N invoices he was contacted by Chestnut and asked to provide an additional $1,450 to the campaign. On June 11, 1970 Lilly sent a $1,450 check to Chestnut at his law offices in Minnesota. This check, like the earlier $10,000 check was made payable, at Chestnut's direction, to the Minnesota Democratic Campaign Committee. Lilly will testify that the $1,450 used to cover this check came from AMPI corporate funds. It is of course obvious that this check, payable to the same committee as the earlier $10,000 check, constitutes an additional violation of Section 608.

October, 1970

Approximately one month before the Senatorial Election Nelson instructed Lilly to deliver an additional $12,500 in cash to Chestnut. As with the $10,000 contribution of May 1970, Lilly borrowed the money from a bank, contacted Chestnut by phone and, a day or so later, in early October 1970, delivered the cash to Chestnut at the latter's law

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offices in Minnesota. After delivering the cash, Lilly repaid the loan with AMPI corporate funds.

Argument

It is well established in this Circuit that evidence of other crimes is admissible, if relevant, except when offered solely to prove criminal character or disposition. United States v. Papadakis, 510 F.2d 287, 294-5 (2d Cir. 1975); United States v. Gerry, Dkt. Nos. 74-2100, 742106 (2d Cir. March 28, 1975); United States v. Williams, 470 F.2d 915, 917 (2d Cir. 1972); United States v. Johnson, 382 F.2d 280, 281 (2d Cir. 1970); United States v. Deaton, 381 F.2d 114 (2d Cir. 1967). Among the purposes for which prior and subsequent similar criminal acts are admissible are to prove knowledge, intent, and plan or design. United States v. Miller, 478 F.2d 1315, 1318 (2d Cir. 1973); United States v. Friedman, 445 F.2d 1220, 1224 (2d Cir. 1971); United States v. Johnson, 382 F.2d 280 (2d Cir. 1967). The Government is entitled to introduce such evidence on its direct case in order to meet its burden of establishing the essential elements of the offense charged, and need not wait until such elements are put in issue by the defendant. United States v. Johnson, supra; United States v. Bryd, 352 F.2d 570 (2d Cir. 1965).

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Section 610 of Title 18 of the United States Code prohibits political contributions by a corporation and provides that any person who wilfully accepts or receives such contributions shall be held in violation of the statute. In the present case the Government intends to introduce evidence that on other occasions both before and after the acceptance of a corporate contribution for which the defendant Chestnut is being tried, he participated in and directed the method by which the same corporation, AMPI, could contribute to the Humphrey Campaign. The Government's purpose will be to show "intent in a pattern or scheme of systematically planned and practically identical criminal acts. . . ." United States v. Johnson, supra, 382 F.2d at 281. Such testimony is probative since Section 610 makes criminal intent an issue and thus places upon the Government the burden of proving Chestnut's intent beyond a reasonable doubt. United States v. Berlin, 472 F.2d 1002 (2d Cir.), cert. denied 412 U.S. 949 (1973); United States v. De Cicco, 435 F.2d 478, 483 (2d Cir. 1970).

Similar criminal acts upon which the Government intends to rely in the instant case are particularly probative because of their close proximity in time and close relationship in subject matter and modus operandi to the crime presently charged. United States v. Bryd, supra, 352 F.2d at 572.

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CONCLUSION

Evidence of Chestnuts' similar criminal acts is highly probative of the issues projected by the charges in this case; thus, we submit that, in the sound exercise of this Court's discretion, such evidence should be admitted.

Respectfully submitted,

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Attorney for the United States
of America

EUGENE F. BANNIGAN,
ROBERT GOLD,
Assistant United States Attorneys,

-of Counsel.

UNITED STATES OF AMERICA)
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v.) 74 Crim. 1191
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JACK L. CHESTNUT,)
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DEFENDANT.)
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MOTION TO SUPPRESS
GOVERNMENT'S EVIDENCE OF
OTHER ALLEGED MISCONDUCT
AND FOR A PRE-TRIAL HEARING

The defendant, JACK L. CHESTNUT, by his attorneys, DOUGLAS W. THOMSON and JOHN A COCHRANE, hereby moves the Court to suppress the evidence of other alleged misconduct which the Government offers to prove on the grounds that the prejudicial effect of the offered evidence manifestly outweights any legitimate probative value, if any, because the offered evidence does not relate to conduct similar enough to that charged to be admissible, because the offered evidence is not relevant to the charges contained in the Indictment, and for other reasons set forth more fully in the Memorandum of Law attached hereto.

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STATE OF MINNESOTA

COUNTY OF RAMSEY

JACK S. NORDBY, OF THE CITY OF ST. PAUL, COUNTY OF RAMSEY IN THE STATE OF MINNESOTA, BEING DULY SWORN, SAYS THAT ON THE 26th DAY OF AUGUST, 1975, HE SERVED TWO COPIES OF APPELLANT'S BRIEF AND ONE COPY OF THE APPENDIX IN THE CASE OF UNITED STATES V. CHESTNUT, DOCKET NO. 75-1268 UPON PAUL J. CURRAN, UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK, BY MAILING TO HIM SAID COPIES, POSTAGE PREPAID AT MINNEAPOLIS, MINNESOTA, AND BY DEPOSITING SAME IN THE POST OFFICE AT MINNEAPOLIS, MINNESOTA, DIRECTED TO SAID ATTORNEY AT 1 ST. ANDREW'S PLAZA, NEW YORK, NEW YORK, 10007.

JACK S. NORDBY

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 26th DAY OF AUGUST, 1975.

Marilyn Robertson

MARILYN ROBERTSON
NOTARY PUBLIC - MINNESOTA
Dakota COUNTY
My Comm Expires April 25 1979